

# OUR WONDERLAND OF BUREAUCRACY

A STUDY OF THE GROWTH OF BUREAUCRACY  
IN THE FEDERAL GOVERNMENT, AND  
ITS DESTRUCTIVE EFFECT UPON  
THE CONSTITUTION

*By*

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*"An nescis, mi Fili, quantilla prudentia mundus regitur."*  
—OXENSTIERN.

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TO THE MEMORY OF MY PARENTS

JAMES NATHAN BECK

MARGRETTA DARLING BECK

LONG SINCE PASSED TO THE GREAT BEYOND  
TO WHOM MY DEBT IS INFINITE

*May 30, 1932*

## INTRODUCTION

THE "gentle reader"—thus he was politely addressed in Victorian days—may be surprised and possibly shocked by the analogy suggested by the title of this book.

By what stretch of the imagination can there be an analogy between Uncle Sam—by tradition shrewd, practical and worldly-wise—and little Alice, whom the kindly genius of Lewis Carroll guided through a wonderland of fanciful dreams? If the reader will accompany the author through the strange wonderland of federal bureaucracy, he may realize that in some respects the analogy is not without justification, and that Uncle Sam has many of the child-like and naive characteristics of little Alice, and that he, too, is dreaming in a wonderland of socialistic experiments in a government, whose constitution was intended to be a noble assertion of individualism.

What can be more artless than Uncle Sam's belief that the wise and noble compact of government, which he believes sprung from the founders of the Republic as Minerva from the brain of Jove, is today the same as when these master builders laid down their implements and declared their work as finished? The fact is that, except in its general outlines and mechanical details, Washington, Hamilton, Franklin and Madison, if they were privileged today to "revisit the glimpses of the moon," would not recognize their own handiwork.

Or what is stranger than the belief that if the President selects eleven men from the body of the people, not one of whom has had any practical experience in operating a railroad, that forthwith, by the magic of a parchment—called a commission—they become endowed with an ability, to which even the most experienced railroad official would not pretend, of supervising and controlling the intricate affairs—mechanical and financial—of all the railroads of the United States?

If the king in the Carroll classic believed in finding a verdict first and then trying the accused afterwards, he merely imitates the Federal Trade Commission, which, after much costly investigation into some business enterprises and after reaching a conclusion as to the guilt of

some unfortunate business man, then proceeds to formulate its own charges and tries the same as prosecutor, judge, jury and Lord-High-Executioner.

The Cheshire cat might well grin at the present theory that the more money the government can wring from an over-taxed people, the greater will be their prosperity. Or, in other words, that the vast revenues of the government, now exceeding annually four billions of dollars, are not taken from productive wealth, but are extracted from airy nothing, as the chemist extracts nitrogen from the air.

Is anything in "Alice" more fanciful than the prevailing theory—advocated by our government—that in a time of straitened circumstances, depleted capital and widespread unemployment, the remedy is for the citizen to spend what remains of his scanty capital in the purchase of commodities, especially luxuries? As the author writes, the American citizen is being urged, not merely by interested manufacturers, but by his government, to purchase automobiles, as the spring models are now available.

Contrast this with the advice that Dr. Franklin gave to his people in a like period of economic depression, when he urged them, as the only cure for their distress, to save and thus create fresh capital, reminding them that if they were heavily taxed by their government, they taxed themselves twice as much by their pride, and thrice by their follies.

Is the Mad-Hatter more capable of crazy ideas than are advanced by the more radical of the Senators, who call themselves "Progressives," and whose characterization by a fellow-Senator is now a classic witticism?

Is any quaint conceit in the Carroll fantasy more fantastic than our Agricultural Department, and its verminiform appendix, the Farm Board, which spend hundreds of millions a year to stimulate the production of farm products by every method, from irrigating waste lands to loaning and even giving money to the farmers, and simultaneously advising them that there is no adequate market for their crops, and that they should restrict production? This advice fell upon deaf ears.

The king and queen, in Alice's kingdom of dreams, cannot be commended for sanity of reasoning, but were their vagaries more irrational than the policy of the federal government in the matter of Prohibition? With a deficit of over two billions of dollars, and the necessity of imposing heavy burdens upon the taxpayer, with an inevitable paralysis of industry, the government nevertheless refuses to impose a tax upon malt liquors and deliberately diverts a potential revenue of five hundred millions of dollars to the bootleg fraternity, who use it, in part, to build up the most formidable conspiracy against law and order that any civilized nation has ever witnessed. This stupendous folly, due to the intense class interest of the farmer and the morbid fanaticism of moral fanatics, if it stood alone, would justify, in respect to our government, the oft-quoted cynical statement of the Swedish philosopher, quoted on the title-page of this book: "With what little wisdom the world is governed."

When Alice awoke from her dreams, as a sensible little girl she realized that the fancies of her mind in sleep were but the children of an idle brain. But Uncle Sam has not yet awakened from his dream of government by bureaucracy, but ever wanders further afield in crazy experiments in state socialism. Possibly some day he may awaken from his irrational dreams, and return again to the old conceptions of government, as wisely defined in the Constitution of the United States.

That Constitution was the noblest expression of the spirit of individualism in the annals of the world. Its fundamental philosophy was that the interference by the government in the life of the individual should be reduced to a minimum. This spirit was embodied in the following eloquent passage from Jefferson's first inaugural:

"A wise and frugal government, which shall restrain men from injuring one another, shall otherwise leave them free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned."

In any discussion, it is always well to define terms, and a definition of bureaucracy as used in this book may therefore be advisable.

The term will hereafter be used with two different meanings, which should be constantly kept in mind by the reader. Bureaucracy, as an invidious term, primarily refers in a democratic government to the aggrandizement of the Executive at the expense of the Legislative branch of the government. This refers only to the mechanics of a government, which sought to divide its powers into the Legislative, Executive and Judicial Departments, and to preserve a just equilibrium between these three inter-dependent functions.

In a broader sense, bureaucracy, as hereinafter considered, refers to the irrepressible war between the individual and the State, and involves the question as to the just limits, under the higher law, of the State over the property and life of the individual.

The profoundest intellect of antiquity, Aristotle, said two thousand years ago that if a constitution—by which he meant the aggregate of the laws prescribed by the State—conflict with what he called the "*ethos*," namely, the spirit or genius of a people, the result of the conflict would not be uncertain, for the laws have no lasting vitality save in the spirit of a people. We must distinguish this "*ethos*," or spirit, of a people from the mere results of the polling booth, or fluctuating votes in legislative assemblies, for these only register the temporary opinions of fleeting majorities, and at times even minorities, while the "*ethos*" of the people is a quality born with the individual and persisting unto his death. "The shallow murmur but the deep are dumb."

If this be true, then it is especially true of a race of individualists, who have never been disposed to place upon the brow of King Demos a crown, which they had taken from autocratic kings. We are of the blood of pioneers. It is true that we have cleared a continent of its once virgin forests, but the American people did something far greater than that. They cleared the mind of America from the obsession of past ages that a State had an un-

limited and divine power to regulate the conduct of the individual. A race of individualists does not deify the State. It refuses to believe that the oil of anointing, that was once supposed to sanctify the head of the monarch and clothe his utterances and acts with infallibility, has now fallen upon the "multitudinous tongue" of the majority. The individualist at all times, and never more than in this country, has said to the State: "There is a limit to your power; thus far and no further, and here shall thy proud waves be stayed." The ten-year revolt against the oppressive regulation of private conduct prescribed in the Eighteenth Amendment is a most encouraging sign. If many Americans had not thus risen in protest, we would not be worthy descendants of a freedom-loving ancestry. It proves that, no matter how powerful the State is, and no matter how great its appeal to the imagination, the American people have not yet wholly lost the spirit of individualism which has made them the greatest nation in the world.

No one has better weighed in the scales of intellect the relative advantages of the legislative and executive branches of the government than John Stuart Mill, in his classic treatise on representative government, and much that he says, as to the merits and demerits of bureaucracy, is so apt to all that follows in this book that an extended quotation may not be inappropriate:

"The comparison, therefore, as to the intellectual attributes of a government, has to be made between a representative democracy and a bureaucracy; all other governments may be left out of the account. And here it must be acknowledged that a bureaucratic government has, in some important respects, greatly the advantage. It accumulates experience, acquires well-tried and well-considered traditional maxims, and makes provision for appropriate practical knowledge in those who have the actual conduct of affairs. But it is not equally favourable to individual energy of mind. The disease which

afflicts bureaucratic governments, and which they usually die of, is routine. They perish by the immutability of their maxims; and, still more, by the universal law that whatever becomes a routine loses its vital principle, and having no longer a mind acting within it, goes on revolving mechanically, though the work it is intended to do remains undone. A bureaucracy always tends to become a pedantocracy. When the bureaucracy is the real government, the spirit of the corps (as with the Jesuits) bears down the individuality of its more distinguished members. In the profession of government, as in other professions, the sole idea of the majority is to do what they have been taught; and it requires a popular government to enable the conceptions of the man of original genius among them to prevail over the obstructive spirit of trained mediocrity. . . . Government by trained officials cannot do, for a country, the things which can be done by a free government; but it might be supposed capable of doing some things which free government, of itself, cannot do. We find, however, that an outside element of freedom is necessary to enable it to do effectually or permanently even its own business. And so, also, freedom cannot produce its best effects, and often breaks down altogether, unless means can be found of combining it with trained and skilled administration. There could not be a moment's hesitation between representative government, among a people in any degree ripe for it, and the most perfect imaginary bureaucracy. But it is, at the same time, one of the most important ends of political institutions, to attain as many of the qualities of the one as are consistent with the other; to secure, as far as they can be made compatible, the great advantage of the conduct of affairs by skilled persons, bred to it as an intellectual profession,

along with that of a general control vested in, and seriously exercised by, bodies representative of the entire people."

In reading the final proofs of this book the author is painfully conscious that it gives but one side of the picture of federal bureaucracy, and that, the least favorable. The other side would reveal many bureaus, which do admirable and useful work. Indeed, as one who has been a part of the federal machine, I state as my belief that while today it is too complex and needlessly large, yet in integrity it need yield to that of no other nation. Corruption in high place has been exceptionally rare, and the federal machine has been too harshly judged by the world, simply because a few men in the great army of civilian employees are faithless.

The author has not attempted to set forth the many admirable features of the federal bureaucracy, and there seems to be no need to flatter the American people with the good features of its governmental system. We are not likely to under-praise ourselves, and our error, if any, is in the assumption of the optimistic philosopher in Voltaire's "*Candide*," that our government is the best in the best of all possible worlds.

The American people need to be shaken out of their self-complacency, and to this end to be reminded of the unfavorable, rather than the favorable, developments of their governmental system.

Moreover, it seems hardly necessary in this age of propaganda and "ballyhoo," to sound the praises of many excellent bureaus in the federal government, for, as will hereafter appear, each has its spokesman to sound its merits by oceans of ink, and by nightly broadcasts. For several years past the vast radio audience has listened to the optimistic accounts of the federal government by distinguished publicists, and they have not left us in doubt as to the purposes of the different bureaus of the government, and their great contribution to that happy day, when prosperity, as Prince Charming, will come to place the glass slipper of renewed prosperity upon America, who, at the

moment, like Cinderella, is sitting disconsolately by the ashes of an unprecedented depression.

These official optimists could take a useful note from Dr. Benjamin Franklin, who told the American people in a similar crisis, that their salvation lay not in their government, but in themselves. The good Doctor, if he were alive today, would also remind the average American that his government is something to live *under*, and not live *on*.

The author has a second reason for not unnecessarily sounding the praises of many excellent bureaus, for he would only confuse the reader by suggesting in many instances that, whatever their practical advantages, their very existence is a betrayal of the Constitution, which contained no grant of power to justify their existence. The pragmatist replies: "What is the Constitution among friends?"

Thus, the only purpose of this book is to remind such Americans, as are seriously interested in their governmental system, of some of its defects, and the author cheerfully leaves to the tellers of economic "bed-time stories" the narration of the glories of federal bureaucracy.

A final word of recognition. The author would not have had the heart, with his many engagements, to have undertaken this work but for the promise of the valued co-operation of his friend and legal associate, O. R. McGuire, Esquire, in gathering the data and assembling much of it into its present form. He is a fine type of public official, and has served the government very faithfully for many years, and, as it seems to the author, without any adequate recognition. He has a useful and important position as Counsel to the Comptroller General of the United States, as a Major, Finance Reserves, U. S. Army, and sometime Special Assistant to the Attorney General of the United States.

My indictment is not against the faithful body of civilian employees, but against a system. Above all, I indict such activities of the government—and they are many—which can find no possible sanction in any grant of power under the Constitution. These activities—however meritorious they may be in other respects—are a liv-

ing betrayal of the Constitution of the Fathers. As Chief Justice Fuller once said, in a notable dissenting opinion (The Lottery Case, 188 U. S. 321):

"It is with governments as with religion—the form often survives the substance of the faith."

JAMES M. BECK.

May 1, 1932.



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## OUR WONDERLAND OF BUREAUCRACY



## CHAPTER I

### THE CURTAIN RISES

"Our Constitution is in actual operation; everything appears to promise it will last; but in this world, nothing is certain but death and taxes."—FRANKLIN.

ANY study of the growth of bureaucracy in our federal system should begin with a brief narration of the simple beginnings of the Republic, and the great basic ideals of American government, of which the Constitution was but one expression.

Nothing was more unpromising than the beginning of the Republic. After a painful travail of four months, a Constitutional Convention had submitted to the American people for their approval a Constitution for the new government. The undoubted fact that none of the Framers was wholly satisfied with the result of their labors, and that it was with extreme reluctance that many of them recommended the Constitution to the people by their signatures, was not encouraging.

Still less encouraging was the unwillingness of the American people to accept the Constitution, for it was only after a bitter struggle of more than a year in the several Colonies, and in some of them by methods that were ruthless, that at last the requisite ratification of nine states was secured. Little support could be expected from the impotent existing government, for it had long since perished in everything but in name. The conditions in the Colonies were those of social anarchy. Credit was gone, and lawlessness was rampant.

Only one star shone in that dark night of disaster, and that was the shining light of Washington's influence, in whom alone the American people had any united confidence. To him they turned in their hour of despair, even as his little army rallied to his standard when he galloped down the Freehold road in the Battle of Monmouth. Even the great soul of Washington despaired that there could be any successful outcome to a seemingly impossible situation.

Due to his influence—and almost to his influence alone—the American people proceeded to put the wheels of government into motion by electing the members of the First Congress, and by selecting George Washington as the first President of the United States. No task could be more unpromising, or seemingly more impossible; and no one recognized this more clearly than Washington himself. The task of leading an unorganized army, composed of untrained militia, in a long war with the trained soldiery of the greatest nation in the world, was not greater than, in that period of utter demoralization, to commence the operations of a government, in which it was obvious that the American people had little faith and whose Constitution they had reluctantly ratified.

His lack of confidence was increased by his modest estimate of his own abilities, and his feeling of despondency is well measured by a letter that he wrote to his friend, General Knox:

“I feel for those members of the new congress, who, hitherto, have given an unavailing attendance at the theatre of action. For myself, the delay may be compared to a reprieve; for in confidence, I tell you, (with the world it would obtain little credit,) that my movements to the chair of government will be accompanied by feelings not unlike those of a culprit who is going to the place of his execution; so unwilling am I in the evening of life, nearly consumed in public cares, to quit a peaceful abode for an ocean of difficulties, without that competency of political skill, abilities, and inclination, which are necessary to manage the helm. I am sensible that I am embarking the voice of the people, and a good name of my own on this voyage; but what returns will be made for them heaven alone can foretell.—Integrity and firmness are all I can promise; these, be the voyage long or short, shall never forsake me, although I may be deserted by all men; for of the consolations which are to

be derived from these, under any circumstances, the world can not deprive me."

When he knew that he had been thus chosen to take the helm of the ship of state, as it commenced its long voyage upon uncharted seas, he awaited the formal announcement at Mount Vernon. The delay in giving him that notice must have given him additional concern. The first Congress was to have met in the City of New York on the 4th of March, 1789, and yet the House of Representatives was unable to secure a quorum until April 1, 1789, and the Senate did not convene until April 5. The electoral vote was then counted, and Charles Thompson was deputed in behalf of Congress to proceed to Mount Vernon to announce the fact. It is interesting to note that Washington's acceptance of the office meant to him, not only the loss of his desired privacy and peace of mind, but also was made difficult by financial embarrassment. It is the general belief that Washington was a rich man, and could well afford the noble gesture of declining, as he invariably did, any compensation for his services, either in the War or subsequently. The fact is, Washington was "land-poor," and it was not easy for him to finance his personal affairs with ready money. Thus, on the eve of the Constitutional Convention, when he reluctantly agreed to go to Philadelphia to preside over that Convention—and without him it would have been a failure—he wrote to a relative:

"I need not tell you, because a moment's recurrence to your own accounts will evince the fact, that there is no source from which I derive more than a sufficiency for the daily calls of my family, except what flows from the collection of old debts, and scanty and precarious enough, God knows this is. My estate for the last 11 years has not been able to make both ends meet. I am encumbered now with the deficiency. I mention this for no other purpose than to show that, however willing, I am not

able to pay debts unless I could sell land, which I have publicly advertised without finding bidders."

He was in the same position when summoned to New York to become the first President of the United States. Early in March he knew that he was to be thus chosen, and he was obliged to apply to Captain Richard Conway, of Alexandria, for a loan of five hundred pounds; and he then said that he never "expected to be driven to borrow money on interest." But he added that he was in debt to numerous people in Alexandria and elsewhere, and that it would be "exceedingly disagreeable to leave Virginia without paying these debts." A second loan was found to be necessary in expectation of his new duties.

Standing in the dining-room at Mount Vernon, Washington received the announcement of his election, and it is but another illustration of his fidelity to public duty that within two days thereafter he had left Mount Vernon, accompanied by Charles Thompson and his secretary and military aide, Colonel Humphreys, to assume his new duties.

That it was to be a duty of small beginnings is well shown by a letter which he then wrote to James Madison, and which is now the property of former President Coolidge. The letter is as follows:

"I have been favored with your Letter of the 19th, by which it appears that a quorum of Congress was hardly to be expected until the beginning of the past week.—As this delay must be very irksome to the attending Members, and every days continuance of it (before the Government is in operation) will be more sensibly felt; I am resolved, no interruption shall proceed from me that can well be avoided (after notice of the Election is announced); and therefore take the liberty of requesting the favor of you to engage lodgings for me previous to my arrival.—Col. Humphreys, I presume, will be of

my party; and Mr. Lear who has already lived three years with me as a private Secretary, will accompany, or precede me in the stage.

On the subject of lodgings I will frankly declare, I mean to go into none but hired ones.—If these cannot be had tolerable convenient (I am not very nice) I would take rooms in the most decent Tavern, till a house can be provided for the more permanent reception of the President.—I have already declined a very polite & pressing offer from the Governor, to lodge at his house till a place could be prepared for me; after which should any other of a similar nature be made, there would be no propriety in the acceptance.”

His neighbors at Alexandria gave him a public dinner before his departure, and, in replying to an affectionate address, Washington made a farewell to his neighbors, which was eloquent in voicing the sadness of his departure and his concern for the future. He said:

“Those who know me best (and you my fellow citizens are, from your situation, in that number) know better than any others my love of retirement is so great, that no earthly consideration, short of a conviction of duty, could have prevailed upon me to depart from my resolution ‘never more to take any share in transactions of a public nature.’ For at my age, and in my circumstances, what prospects or advantages could I propose to myself, from embarking again on the tempestuous and uncertain ocean of public life?”

The affectionate greetings that he received on his journey to New York gave him some ground for encouragement, for at Georgetown, Philadelphia, Trenton, and Brunswick, he was received with general and enthusiastic acclaim. From Elizabethtown Point he embarked for New York with a considerable retinue, but, remembering

the fate of other great characters in history, he did not permit these evidences of affection to deceive him as to the serious nature of his task, or as to its ultimate effect upon his reputation. His diary records:

"The display of boats, which attended and joined on this occasion, some with vocal and others with instrumental music on board, the decorations of the ships, the roar of cannon, and the loud acclamations of the people, which rent the sky as I passed along the wharves, filled my mind with sensations as painful (contemplating the reverse of this scene, which may be the case after all my labours to do good) as they were pleasing."

He little anticipated the unique permanence and universality of his fame, which is timeless.

The Governor of New York was at Murray's Wharf to receive Washington, and he was accompanied to the home provided for him with military honors, and to the joyous acclaim of the people. He was not destined to be a "paying guest" in a private home, for the State of New York had placed at his disposal the former home of a Walter Franklin at Pearl and Cherry Streets and this became his official residence.

On the 30th of April he took his oath of office in the presence of the people, and then entered the Senate chamber, where he delivered his noble inaugural address, which literally commenced with a prayer and ended with a benediction.

It is interesting to note that, notwithstanding the state of his finances, which had made borrowing necessary to enable him to go to New York, he included, in his inaugural address, a disclaimer of any intention to accept any compensation for his services. He then said:

"When I was first honored with a call into the service of my country, then on the eve of an arduous struggle for its liberties, the light in

which I contemplated my duty required that I should renounce every pecuniary compensation. From this resolution I have in no instance departed. And being still under the impressions which produced it, I must decline, as inapplicable to myself, any share in the personal emoluments which may be indispensably included in a permanent provision for the executive department; and must accordingly pray that the pecuniary estimates for the station in which I am placed, may, during my continuance in it, be limited to such actual expenditures as the public good may be thought to require."

After the inauguration ceremonies, Washington, accompanied by Congress, repaired to Saint Paul's Chapel, where a service of thanksgiving was given; and then Washington returned to his new home to take up the problem of starting the ship of state on its long journey, with only the Constitution of the United States as his chart.

It may seem strange that his first concern was as to his social duties as the new Executive. To what extent was he to follow the ceremonial, which then universally prevailed as to the Chief Executive of any country? This was not a mere matter of ceremonial. It greatly concerned the allotment of time which he could give to the various phases of his work. He did not feel, as later Presidents, that he would best serve the public interest by being accessible at all times, to all people, irrespective of the nature of their calls. Respect for his high office required that he should not only hold himself somewhat aloof from the ordinary currents of human life, but that he should see only those, who had some legitimate claim to his time.

This fact, coupled with the debate which at once developed as to his title, subjected him to so much criticism that a friend and relative, Dr. Stuart, wrote to him that even in Virginia there was much criticism as to his asserted assumption of regal authority. Washington's reply is characteristic. After recognizing the advantage of honest criticism, and that the Executive is not any more

free from the white light of publicity than any other public official, he concluded:

"I should have been unable to have attended to any sort of business, unless I had applied the hours allotted to rest and refreshment to this purpose; for by the time I had done breakfast, and thence until dinner—and afterwards until bed-time, I could not get relieved from the ceremony of one visit before I had to attend to another. In a word, I had no leisure to read or to answer the despatches that were pouring in upon me from all quarters."

Evidently the democratic spirit of the age—for the world was then in the first stage of the French Revolution—did not like the formal levees, and Washington was again compelled to defend himself in a second letter to Dr. Stuart, in which he again suggested the difficulties, under which any President works, where democratic conventions require him to be all things to all men. He said:

"Before the custom was established, which now accommodates foreign characters, strangers and others who from motives of curiosity, respect to the chief magistrate, or any other cause, are induced to call upon me, I was unable to attend to any business whatsoever. For gentlemen, consulting their own convenience rather than mine, were calling from the time I rose from breakfast—often before—until I sat down to dinner. This, as I resolved not to neglect my public duties, reduced me to the choice of one of these alternatives; either to refuse them altogether, or to appropriate a time for the reception of them. The first would, I well knew, be disgusting to many;—the latter I expected, would undergo animadversion from those who would find fault with or without cause. To please everybody was impossible. I therefore adopted that line of con-

duct, which combined public advantage with private convenience, and which, in my judgment, was unexceptionable in itself. These visits are optional, they are made without invitation. Between the hours of three and four every Tuesday, I am prepared to receive them. Gentlemen, often in great numbers, come and go;—chat with each other;—and act as they please. A porter shows them into the room; and they retire from it when they choose, and without ceremony. At their first entrance they salute me, and I them, and as many as I can talk to, I do. What pomp there is in all this I am unable to discover. Perhaps it consists in not sitting. To this two reasons are opposed: first, it is unusual; secondly, (which is a more substantial one) because I have no room large enough to contain a third of the chairs which would be sufficient to admit it. If it is supposed that ostentation, or the fashions of courts (which by the bye I believe originate oftener in convenience, not to say necessity, than is generally imagined) gave rise to this custom, I will boldly affirm that no supposition was ever more erroneous; for were I to indulge my inclinations, every moment that I could withdraw from the fatigues of my station should be spent in retirement. That they are not, proceeds from the sense I entertain of the propriety of giving to every one as free access as consists with that respect which is due to the chair of government;—and that respect, I conceive, is neither to be acquired or preserved, but by maintaining a just medium between too much state, and too great familiarity. Similar to the above, but of a more familiar and sociable kind, are the visits every Friday afternoon to Mrs. Washington, where I always am. These public meetings, and a dinner once a week to as many as my table will hold, with the references to and from the different departments of state, and

other communications with all parts of the union, is as much, if not more, than I am able to undergo; for I have already had within less than a year, two severe attacks;—the last worse than the first,—a third, it is more than probable will put me to sleep with my fathers—at what distance this may be, I know not.”

Under these difficult circumstances, and subject to these social demands, Washington began his work of building the super-structure upon the foundation of the Constitution.

The first necessity of the new government was to provide revenues, and this was measurably accomplished by the passage of the first tariff act. Having made this provision to fill the empty purse of the nation, the Congress next proceeded to construct the Executive branch of the government.

Of necessity, it was divided into departments, and thus began, for better or worse, the bureau system of the United States. Even if there had been only one Department, it would necessarily have been divided into bureaus, to attend to the varied details of government, with which even the new-born Republic found itself speedily confronted.

The first Congress created three Departments, which are now known as the Department of State, the Treasury Department, and the Department of War.

In the creation of these Departments, the Congress was at once confronted with a fateful question, upon which the whole future of the federal bureaucracy would turn. It concerned the power of removal.

The Constitution had made no express provision in respect to this important power. If the Congress had the power of removal of public officials, then the federal bureaucracy would have been a congressional one, and its present evils multiplied a thousand-fold.

If, on the contrary, the President, by virtue of his executive power, was vested with the power to remove his subordinates, such power made him one of the most powerful constitutional magistrates of the world—for the power

to remove involves the power to control—and it is obvious that if the President had such power (not with the sufferance of Congress, or subject to its regulation), then the Executive Department could become a powerful independent branch of the Government, and not the mere servant of Congress.

This was to be a fateful question in American politics for more than a century and a quarter. It was to bring about two of the gravest crises in our national life. It led to the condemnation by the Senate of Andrew Jackson, and to the unsuccessful impeachment of Andrew Johnson. It was only conclusively determined about a hundred and thirty-six years later, in one of the most notable decisions of the Supreme Court in American history. The importance of this question in determining the character of the bureaucracy about to be created, is so important that the history of this century-old controversy will be discussed more in detail in a later chapter.

Two other questions arose in the first days of Washington's administration, which were destined to have a continuing influence upon the problems of bureaucracy.

The Constitution had constituted the Senate, in respect to certain important functions, as an advisory council to the President. He was required to nominate the principal officers of the government "by and with the advice and consent of the Senate," and the same concurrence was required in the making of treaties with foreign nations. The question therefore speedily confronted Washington whether, in negotiating such treaties, he should preliminarily invite the views of the Senators, as the "elder statesmen" of the Republic.

Apparently it was expected that he would do so, and he made the attempt; but on the very first occasion, when he invited the members of the Senate to confer with him, there were so many conflicting views that he found that the Senate was then, as it was destined afterwards to be, a very cave of *Adullam*, and he wisely reached the conclusion that the wheels of government would speedily sink into the mire of inaction, if he were obliged to confer with the Senate as to these and many other executive acts. His

first experience was his last, and he left the conference in a state of irritation, and thereafter merely sent to the Senate the nomination of officials, and the treaties after they were negotiated.

This profoundly affected the whole future of the Executive, and today even the Senate would be disposed to agree that if the government is to be one of efficiency, Washington's policy was the only possible one.

A similar problem arose when the French Minister insisted upon conferring with President Washington as to various matters which concerned the relations of the two countries. Washington promptly advised the Minister that any communications that he cared to address to the President should be transmitted through the State Department. Upon this foundation was securely built the immense importance of the office of Secretary of State.

The development of the Cabinet, as a distinctive part of our constitutional system, may now be mentioned. The Constitution does not in terms create a Cabinet, but the advisability of such a body was the matter of very earnest discussion in the Constitutional Convention, and it finally contented itself by simply providing for heads of departments and these have become, in the practical interpretation of the Constitution, the so-called Cabinet of the President.

In discussing this matter, the framers of the Constitution had in mind two different conceptions of an intermediate body between the President and the Congress. Unquestionably they had the model of the British Constitution constantly in mind, but that contained then, as now, two different forms of an advisory council. One is the Privy Council which, as a body of elder statesmen, advises the Crown, and the other, composed of the leaders of the House of Commons, to whom executive functions are assigned.

At first the framers favored the idea of an intermediate body between the Chief Executive and the Congress analogous to the Privy Council, to be called the "Council of Revision." With this conception of a select body of men, who would divide responsibility with both branches, the

States which formed the Union had ample experience in colonial days, for many of them had an organ of government similar to the Privy Council.

A majority of the Convention did not look favorably upon the plan. As one of the youngest, but ablest, members of the Convention said:

“Give him (the President) an able council and it will thwart him; a weak one and he will shelter himself under their sanction.”

The proposed Council of Revision was to be composed of the Chief Executive's ministers, and the Chief Justice of the Supreme Court. Its proponents feared that if all executive power were vested in a single President, it would destroy a democratic form of government, and there are some thoughtful students of American institutions who today feel that the Convention was in error in rejecting the scheme of an intermediate Council. It would never have worked in practice, for responsibility would have been divided between the President and the Council of Revision in such a way that the moral authority of the President would have been destroyed, and the nation would have had a multi-headed Executive, with all the attendant perils of cabal, intrigue and disunity.

Therefore, the Convention vested, in one sweeping phrase, the “executive power”—a term of very broad significance—in a President, and, if that had not been the case, the ship of state would have been threatened by many social convulsions without a captain on the bridge, who had sufficient authority to navigate the ship.

Moreover, the utility of such a Council of Revision of elder statesmen was to some extent secured by the peculiar functions of the Senate, for, as previously stated, the President can neither appoint any high officer of the State, sign a treaty, nor declare war without the concurrence of the Senate. Indeed, only Congress can declare war.

A more common criticism by distinguished English students of our institutions is this asserted separation of the Executive and Legislative branches of the government,

because America has no Cabinet in the English sense of the term as a part of the legislative branch. This suggested weakness is very largely imaginary, because in this age of the telegraph and telephone there is no difficulty in having close and intimate co-operation between the two branches of the government. The President can at all times address any communication to Congress and, if necessary, can call them into joint session and express his views by an oral address. He can send for any member of Congress to explain his views, and frequently does call the leaders of Congress—especially of his own party—into consultation. The heads of the ten great departments, who constitute his so-called Cabinet, can at any time address a communication to Congress, or if desired, appear before the Committees of Congress to explain the views of the Executive.

The distance between the White House at the one end of Pennsylvania Avenue and the Capitol at the other does not prevent the closest co-operation between the Executive and the Legislative branches of the government. The most that may be said is that neither the President nor the members of his so-called Cabinet can be hailed before the Congress and heckled by questions.

The contrary view is due to the belief that the framers attempted to accept, in its literal import, the Montesquieu doctrine of the separation of powers. The fact is that they were little influenced by Montesquieu, but a great deal more by the model of the English Constitution. In the Federalist Papers, James Madison, sometimes called (and not without reason) "the Father of the Constitution," called the advocates of the Montesquieu doctrine "maxim-mongers," and he pointed out that these theorists had "totally misconceived and misapplied" the words of Montesquieu; and he added that the Constitution did not "forbid, but it required a blending of the two branches of government, to insure unity of action."

Such unity of action has always resulted, except when the President finds himself opposed to a Congress, in which his political opponents have a majority. This at times happens, but only for a short period of time and then the machine does not move as smoothly as before. This is

illustrated by President Wilson's unnecessary and, as the author believes, tactless quarrels with a hostile Senate. Ordinarily, however, the Executive and the legislature work together as good yoke-fellows, for, after all, each branch of the government is subject to the great pressure of public opinion.

In this respect the power of the President is unique. It is his duty to give to the Congress, from time to time, information on the state of the Union. He is further to recommend measures for its adoption. This makes him the intellectual leader of the American people and unless he wounds the sensibilities of the Congress, he can at all times influence its deliberations by appealing, in this method, not merely to their reason, but, above all, to the mighty force of public opinion, which is the court of last resort. Thus he can do what is forbidden to an English King.

If America did not formally and in name adopt the parliamentary cabinet system, it was because, at that time, the Cabinet in England was somewhat under a cloud. The House of Commons was overrun with public officials who owed their places to the favor of the Crown. Swift and Hume attempted to justify that era of corruption as necessary to support the independence of the Crown, and even Edmund Burke, who himself owed his entrance into public life to the gift of a patron, discouraged any attempt to stop the corruption of Parliament in the interest of the Crown. The framers of the Constitution wanted to avoid this. They wanted to protect the independence of Congress by excluding from its membership those, who had received the patronage of public place from the Executive, and the Constitution therefore provided that no executive officer, during his tenure of office, could be eligible to membership in Congress.

My own experience in Congress leads me to doubt that its usefulness would be aided if the ten members of the President's Cabinet were necessarily members of the Congress. It is true that they could, on the floor of either House, defend themselves against unjust attacks, and might influence votes, then to be taken, upon measures of public

policy. But the same objective is reasonably attained, as previously stated, by the ability of the Executive and his Cabinet at all times to have close and immediate contact with the Congress, either by formal communications, which are printed upon its records, or by appearing before the Committees and explaining the views of their departments.

So intimate and effective is this connection that the initiative of most public measures, especially those of taxation and expenditures, originate with the Executive branch of the government, and are generally accepted in principle by Congress. Indeed, under the budget system, which was first initiated in the administration of President Harding, the budget office, as the representative of the President, suggests the amount of expenditures, and these are largely raised by forms of taxation, which are in the first instance considered and formulated by the Treasury Department.

## CHAPTER II

### THE GREAT OBJECTIVES OF THE CONSTITUTIONAL CONVENTION

"But whatever may be the judgment pronounced on the competency of the architects of the Constitution, or whatever may be the destiny of the edifice prepared by them, I feel it a duty to express my profound and solemn conviction, derived from my intimate opportunity of observing and appreciating the views of the Convention, collectively and individually, that there never was an assembly of men, charged with a great and arduous task, who were more pure in their motives, or more exclusively or anxiously devoted to the object committed to them."—JAMES MADISON.

IN our consideration of the historic background of the problem of bureaucracy, it is also important to consider, even though briefly and inadequately, the great purposes, which the Framers of the Constitution had in mind in the creation of the new government. Upon this point there is great and general misunderstanding, due largely to the fact that the average man derives his conception of the Constitution from the legal profession.

To the lawyer the Constitution has the finality of a religious revelation and its text the same literal authority. It is assumed that the Constitution has come to us as the Tables of the Law were handed, by divine inspiration, to Moses, and that the Constitution carried out with literal accuracy the wishes of the great Convention, which framed it. Apart from the influence of this filio-pietistic attitude of the Bar, the fact that the records of the Constitutional Convention were, except in fragments, unknown for nearly fifty years after the adjournment of the Convention, caused, during that time, an attitude of almost unreasoning belief in the omniscience of the Convention. It was only when James Madison died in 1836, and his daily record of the deliberations of the Convention were discovered among his papers, that the American people began to realize that the Constitution was but a composite, and, indeed, a compromise of the conflicting ideas of the members of the Convention, and that none of

its members, on the conclusion of their labors, was wholly satisfied with the concrete result.

It was then too late to disturb the rooted belief of the American people, that the Constitution had come *cap-à-pie* from the minds of the Fathers, fully equipped and in all respects perfect. Even today, notwithstanding a deep and wide research into the history of the Convention, it is not yet realized, except vaguely, that the Convention failed in some of its great objectives. This does not depreciate the work of the Framers, so justly acclaimed by all succeeding generations, for if they did not accomplish all they had attempted, yet the result has so bravely stood the arduous test of experience that it can be truly said of the Constitution that it has hitherto been the most successful single experiment in the art of government in the annals of mankind.

Nevertheless, the fact remains that some of the chief objectives sought to be obtained by the Constitution, and many of them desirable, failed for want of sufficient support.

It has been often said and generally accepted that the immediate purpose of the Framers was to relieve the infant nation of the burden of restrictive regulations of commerce, which each state was selfishly imposing upon its neighbors. This fact is true, for it was the attempt of the Commissioners of Maryland and Virginia to abolish trade regulations on the Potomac that led to the conference at Alexandria, which in turn led to a larger conference at Annapolis, and this in turn resulted in the summons to all the Colonies to send representatives to a conference to be held in Philadelphia in May, 1787, to formulate, not merely a common policy of commerce, but also a new form of a National Government.

While, therefore, the necessities of commerce were the immediate antecedent cause of the Constitutional Convention, anterior and far more fundamental causes had preceded the difficulties of the Colonies concerning conflicting commercial restrictions.

The first and great objective was to form a National Government instead of a League of States, in order that

matters of general concern could be controlled by a central authority. In this the Convention succeeded and nothing is more admirable in the annals of statecraft than the nice adjustment of the Federal Constitution between central authority and the just claims of the States to local self-government. From that day to this the Federal Constitution has been the classic model of the federated state.

The second great objective, which was of equal concern to the Founders of the Republic, was to provide for a more equitable distribution of political power, and a proportionate equality in bearing the expenses of government.

Prior to the Constitution, the government of the first Continental Congress, which was merely a military alliance, and the later government of the Confederation, which was a miniature League of Nations, had no direct authority to impose taxes upon the American people. They could only requisition the States to make their proportionate contributions to the common fund; and the various Colonies responded to these requisitions in varying and, in some cases, most inequitable proportions. Under the old government, moreover, each State had but one vote, irrespective of its size, population, or estimated wealth; and, in the inchoate state of our government, the rule of unanimity prevailed, and proved as disastrous as had always the similar provision, called the *liberum veto*, in the tragic annals of Poland.

When the War of Independence had happily ended, the Colonies had become new-born States and had all the self-conscious pride of sovereign nations. While their economic necessities impelled them to consider the formation of an efficient central government, many of the new-born States, especially the smaller ones, were indisposed to confederate upon any equitable basis. Upon the other hand, the larger and wealthier States had borne, during the War of Independence, a disproportionate burden of the expenses, both of money and man-power, and felt very deeply that, if a central government were to be formed, there must be a new distribution of political power, which would more fairly measure the relative importance of the several States, and this became the great issue of the

Convention. Unhappily, the Constitutional Convention, due to the threats of the smaller States to secede from the Convention, and the apparent necessity of forming a central government, largely failed in this objective. It is true that in the House of Representatives representation was to be based on population, but this concession was of little value, when the States were equally represented in the Senate, whose concurrence is necessary to the enactment of any law.

It is also true that, under the Constitution, all direct taxes were required to be apportioned among the States in proportion to population, but this beneficent provision of the old Constitution was destroyed by a later generation in the adoption of the Sixteenth Amendment.

Therefore, as to an equitable distribution of political power, the Constitutional Convention failed in its great objective, and, as to the equal distribution of the burdens of taxes, it temporarily succeeded, but the Sixteenth Amendment has enabled the smaller States to impose the greater part of the burdens of taxation upon the few States of large population and considerable wealth.

The third great objective of the Convention was to form a government of strictly limited powers. They did not intend to create a new nation that would submerge the States, for they were jealously insistent upon the right of self-government.

In the first half-century of the Republic, it appeared that the Convention had, in a remarkable way, accomplished this objective, but it is now clear, although the fact is not generally recognized, that this great objective has long since been defeated. This is due not merely to the adaptation of the Constitution to new conditions by usage, practical administration and judicial interpretation, but also in a more striking way, through a power which has proved the vulnerable heel of our Achilles. That power is the power of appropriation. Granted the power to appropriate money without any enforceable restriction of the Constitution, there is necessarily implied the power to supervise the application of the money thus appropriated. In this way, as will hereafter appear in this study

of bureaucracy, the nation is now engaged in many activities, as to which it would be impossible to suggest any pertinent grant of power in the Constitution. As will also be shown hereafter, many of the bureaus in the more recently created departments of the Government, like those of Agriculture, Labor and Commerce, are purely extra-constitutional, but the loyalty of the States "to the old Flag,—and an appropriation" has so submerged both the pride and self-consciousness of the States, that today they are little more than subordinate police provinces.

Closely related to this unrealized objective was another great objective, which the Framers of the Constitution had in mind.

The constituent States, in granting the new nation the power to impose taxes directly upon the people of the United States, were greatly concerned as to what use the central government would make of the revenues thus raised. As previously shown, it was not their intention to confer any unlimited power of appropriation, and they intended to provide that the Federal Government could only expend money in the due exercise of the powers specifically granted to them. They tried to insure this by two methods. The first was the following clause from Article I, Section 9:

"No money shall be drawn from the Treasury but in consequence of appropriations made by law, and a regular statement and account of the receipts and expenditures shall be published from time to time."

This wise limitation was too vague in its terms to be effective, for Congress can, and, from the beginning of the government, has made large lump appropriations to the Executive to be spent at will. As a most glaring instance of this—referred to at length in a later chapter—the Seventy-First Congress created the Federal Farm Board, with a very vague statement of its powers and objectives, except that it was to do something to relieve the undoubted distress of agriculture. It then provided

that disbursements could be made upon the sole authority of the Chairman of the Board. It appropriated to the Farm Board, for certain undefined purposes, the sum of \$500,000,000. Thus, the Congress gave to the Chairman of the Farm Board a blank check upon the Treasury of the United States for \$500,000,000, to be spent in the discretion of the Board; and the folly of this liberal and unprecedented grant of power is shown by the fact that the Farm Board, after creating subsidiary corporations, then loaned them over \$300,000,000, to stabilize wheat and cotton by purchases and sales in the market.

Thus Uncle Sam became the greatest gambler in history.

The Constitution sought to place a further and most important limitation upon the power to tax. The clause of Article I, Section 8, as originally drawn, read:

“Section 8. The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense of the United States.”

Not satisfied with this strict grant of power to spend, the Convention, in an unguarded moment, added the words “and for the general welfare of the United States.” No one can read the history of the Convention and be in doubt that this was a limitation upon the power to spend, and is not a grant to spend for any purpose that the Congress may think is for the general welfare of the United States. This illustrates how imperfect a medium of thought language is. Disraeli was wont to acknowledge the gift of a book by the equivocal reply: “I shall lose no time in reading your book.” Similarly, the limitation upon the power to spend, that it must be “for the general welfare of the United States” has been interpreted for the last century to mean that whatever Congress deems to be for the general welfare of the United States is a legitimate subject for expenditure. There could be no grosser misinterpretation than that. It has made old “General Welfare” the usurper, who has consistently destroyed the purposes of the Federal Government, and converted a government

of theoretically limited powers into one of almost unlimited powers.

It is true that this was not the first appearance of the expression in the Constitution, for the noble Preamble states that the Constitution was created "in order to form a more perfect Union, establish Justice, insure domestic tranquillity, provided for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity." No authority on the Constitution, whose opinion is of any value, has ever questioned that this Preamble does not contain any grant of power. Indeed, the Preamble was an afterthought.

After the general form of the Constitution had been adopted by the formulation of 21 points by the Committee of the Whole, the Convention, on the 18th day of July, 1787, constituted a Committee on Detail to reduce these points to final form. Twenty-one days later the Committee reported to the Convention, and preceded the Constitution with a Preamble, which contained no such statement of objectives. The work of the Committee was debated for thirty-one days, but the preamble apparently gave rise to little or no discussion. It was possibly regarded as little more than an enacting ordinance. The work of the Committee was then referred to a Committee on Style, and four days later that Committee reported the Constitution substantially in its present form.

The inclusion in these objectives of that of "the general welfare" had reference to the fact that the American Colonies were not homogeneous, but differed in many ways from each other. They were diverse in class, some of them being aristocratic and others of democratic tendencies; in race, for while the English were predominant, there was a considerable mixture of Dutch, Swiss, Swedes, German, French and Spanish; in religion; and even in forms of government, for some had been charter governments, others proprietary governments, and some crown colonies. Moreover, their economic differences were profound and far-reaching, for the industrial interests of the west and south were not the interests of the east. Even in cultural development there were marked differences, for naturally there

was scant sympathy between the eastern States, which measurably reproduced the social culture of Europe, and the pioneers on the frontier, who were living almost in a state of nature.

All these diversities of interests, creeds, classes, forms of government and social tendencies tended toward disintegration, rather than to integration. It was for all these reasons most important, if harmony were to prevail in the new government, that the appropriations should not be made for the local or special benefit of any of these classes. For this reason some limitation was necessary on the power of expenditures, and, therefore, both in the preamble and in the taxing clause, was written the express limitation that the expenditures of the revenues raised by the Federal Government by means of direct taxation of the people of the United States, should only be used for the "*general welfare*," meaning thereby the general welfare as defined in the specific grants of power to the Federal Government.

In no objective did the Constitutional Convention more signally fail than in this. In attempting to limit the power of expenditure, the Constitution made possible an interpretation which has given to the power of expenditure an unlimited scope. In the first century of the Constitution, the great limitation was measurably observed, and the long struggle over the question of internal improvements turned upon this point. After the Civil War the limitation was converted by practical construction into an unlimited grant of power, and today the Congress grants stupendous amounts, not only for the special and exclusive benefit of sections and States, but even for that of special classes. This has meant, for many practical purposes, the subversion of the Constitution.

It may be likened to that tragedy on the high seas, when the *Titanic* was struck by a submerged ice floe. After the collision, which was hardly felt by the steamer at the time, the great liner at first seemed to be intact and unhurt, and continued to move. But a death wound had been inflicted under the surface of the water, which poured into the hold of the steamer so swiftly that in a few hours the

great boat had sunk forever into the depths of the ocean.

The power of appropriation is such an ice floe. Exercised for the last half-century with a prodigality that to-day has brought the nation to the verge of bankruptcy, it has inflicted a similar fatal wound to the good ship *Constitution*, and the end of constitutional government, if not in sight, can at least be reasonably anticipated as a possibility.

All these considerations must be borne in mind in the succeeding chapters on the development and menacing growth of bureaucracy, due in so large part to the failure of the wise men of the Constitutional Convention to realize their great objectives.

## CHAPTER III

### BUREAUCRACY IN THE COLONIAL DAYS

The Red Queen shook her head. "You may call it 'nonsense' if you like," she said, "but I've heard nonsense, compared with which that would be as sensible as a dictionary."

—ALICE IN WONDERLAND.

To understand the conflicting views of the Master Builders of the Republic upon this question of bureaucracy, a brief review of bureaucracy in colonial days seems necessary. It reveals a story of astonishing ineptitude. The second Continental Congress, which met in Philadelphia in May, 1775, was immediately confronted with the responsibility of either exercising or delegating executive or administrative power. Its members were cognizant of the fact that the oppression, which finally led to the Declaration of Independence, was the result of bureaucratic acts of royal officials of the Mother Country, chiefly the Lords of Trade representing the Crown, which acts could not be controlled by the legislatures of the various colonies. This fact created in members of Congress, particularly Samuel Adams, serious distrust of executive power exercised by other than its own members. So strong was this distrust that, notwithstanding the protests of Washington, who believed that "influence was not government," long delay and much suffering was inflicted upon the army and navy before there was established any effective administrative branches of the Government to conduct the executive business of the new Nation.

As a part of its executive duties, the Continental Congress was charged with responsibility of raising funds for the conduct of the war with England; with securing arms, ammunition, clothing, food and other supplies for the army; and with the outfitting and maintenance of vessels of war capable of challenging the ruler of the seas. These duties it could exercise directly through its own members or by agencies established for such purposes.

Characteristically of legislative assemblies attempting to overcome executive power believed to be excessive, Con-

gress attempted at first to exercise these executive duties by appointing on May 27, 1775, a committee of its members to consider ways and means of obtaining ammunition and military stores. This was vital, as few, if any, manufacturers of war material then existed in the infant Nation. Our war of independence was an act of sublime audacity. A few days thereafter it appointed a further committee to borrow money for the purchase of needed war material and on June 14, 1775, a committee was appointed to draw up rules for the government of the Army. On June 24, 1775, a further committee of seven members was given the task of devising ways and means for arming and equipping the militia of the several colonies. Other committees were appointed for the conduct of the war, each charged with a particular duty and varying in number from three to thirteen, the latter being usually charged with the more important duties, so that each colony might be represented.

During the month of July, 1775, the Continental Congress had recommended that each colony establish a committee of safety to superintend and direct all matters necessary for their security and defense, especially during the recess of their legislatures and so successful were these permanent committees that Congress turned to a somewhat similar device, when its own procedure of attempting to conduct the war by means of committees of its own members had broken down. The committees or councils of the various colonies were generally composed of their leading men and worked well when compared with the accomplishments of the congressional committees.

Washington made an urgent appeal to Congress for some administrative organization, other than a congressional committee, to supervise the Army and on June 12, 1776, Congress created a Board of War and Ordnance, to consist of five members, selected from the members of Congress, and this Board was given broad and almost unlimited powers. The work soon proved too strenuous and on December 26, 1776, a committee was appointed to prepare "a plan for the better conducting the executive

business of Congress, by boards composed of persons, not members of Congress." Upon the recommendation of this committee, there was created on October 17, 1777, a new board to be composed of three persons, not members of Congress. Three weeks later the membership was increased to five, but the resolution creating the board provided that "all the proceedings of the Board shall be inspected by Congress, or a committee of three appointed for that purpose, once a month or oftener, as may be thought proper and convenient." The spokesmen of this new board were the members of the old Board of War and Ordnance which continued in existence and whose members were delegates in Congress. Approximately a year later the composition of the new Board of War was changed so as to provide that members of Congress should serve as two of the five members and on November 4, 1778, two members of Congress were appointed to attend the Board of War. An examination of the American State papers will show that the Congresses under the Constitution made for many years detailed examinations of the books and papers of the administrative departments of the Government.

There was a similar development in the naval administration. Congress on October 13, 1775, passed a resolution to fit out two vessels to intercept British transports bringing supplies and troops to the colonies. Two weeks later provision was made for two additional vessels and the Committee was increased from three to seven. This number was increased on December 11, 1775, to thirteen, and became known as the Naval Committee. A new committee, consisting of members of Congress, was established on December 14, 1775, to supervise the conduct of naval affairs and it soon absorbed the functions and duties of the older Naval Committee. This new Committee became known as the Marine Committee and performed practically the same duties for the infant navy as were performed by the Board of War for the Army.

Again the administrative work became too heavy for the Marine Committee and the expedient was adopted of employing at least "three persons well skilled in maritime

affairs" to execute the business of the Navy under the direction of the Marine Committee. These three men became known as the Navy Board and assistant boards of equal number were established, responsible not to the Navy Board, but to the Marine Committee, to function at Boston and Philadelphia, respectively. Congress returned in part to this system in 1815, with the three commissioners subordinate in part, not to Congress, but to the Secretary of the Navy.

This plan for conducting the naval affairs of the new Nation was so inefficient and cumbersome that on October 28, 1779, there was created a Board of Admiralty to consist of three commissioners, not members of Congress, and two members of Congress, subject to the control of Congress, to superintend the Naval and Marine Affairs of the Colonies. The inefficiency of such a plan is illustrated by the difficulty experienced by John Paul Jones in his repeated attempts to procure vessels to harry the British coast and shipping. Jones finally obtained his ships from the French Foreign Minister, Vergennes, whom he sought after reading Poor Richard's maxim, "If you want a thing done, go. If not, write." He renamed his flagship, the *Bon Homme Richard*, because Franklin's homely wisdom had taught him the way to succeed.

Perhaps the financial administration of the Continental Congress best illustrates the difficulties of a legislative body attempting to conduct executive business—difficulties attendant upon both the inexperience of the members in matters of finance and upon the inability of the members to ensure any continuity of action. These difficulties were aside from the seeming impossibility of the Congressional Committees to devise and enforce any accounting for public funds entrusted to paymasters to be disbursed for authorized purposes of the new government.

The experience of the members of the Continental Congress in public finance had been extremely limited, for the financial transactions of the various colonies had been small in amount and of a simple and even primitive character. Two treasurers were appointed by Congress on July 29, 1775, as a check on each other, and on Septem-

ber 25th of the same year a committee of Congress was created to examine and report on all accounts. On the succeeding February 17th Congress created a standing committee of five to have the superintendence of the treasury. This committee employed agents to examine the accounts of the treasurers; to liquidate the accounts, and for the sale of bills of credit.

There were some other minor changes in the financial administration, but the system remained cumbersome, ineffective, and lacking in necessary control to secure economy and efficiency in the receipt and disbursement of public funds. It was not until an ordinance of September 26, 1778, that any order was brought out of the chaos and so fundamentally sound was this reorganization that many of its features are found in the present organization of the Treasury Department.\*

The modification of 1779 abolished the old Treasury Board and established a new board to consist of five members, two of whom should be members of Congress and with powers similar to the Boards of War and Maritime Affairs. However, the work of the treasury officials was not materially changed by this ordinance, but appeals from their decisions were thereafter to the Treasury Board rather than to Congress.

There was also established on September 18, 1775, a Committee of Commerce, consisting at first of five and later of eight members of Congress. This committee was concerned with the importation into the colonies of munitions of war, as well as other articles of commerce, which could not be obtained except from Europe, the manufacture of goods having been discouraged in America by the Mother Country.

\* Hamilton's contribution to the organization of the Treasury Department, while considerable and noteworthy, has been somewhat exaggerated by his admirers. Bullock, *The Finances of the United States from 1775 to 1789*, says:

"This act shows a great advance over the previous methods of financial administration. Not only have the titles of the more important treasury officers been retained to the present day, but the system of checks and balances here instituted is much the same as that now in operation between the different branches of our Treasury Department. Indeed it would be difficult to improve upon some of the leading features of this treasury establishment. The law of 1789 which established the present department owed much to this act of 1778 and to the subsequent modifications introduced in 1779 and 1781."

The Committee of Foreign Affairs did not follow the development of the Committee on Commerce so much as that of the Board of War and the Admiralty Board, though Congress thought then, as some of its members think now, that it was, and is, entirely capable of conducting the foreign affairs of the country, including control over our representatives abroad. As the author stated from the floor of the House of Representatives in an address of December 14, 1931, we had easily the worst conduct of foreign affairs in our history during this period and all that saved this country from pitiful disaster in its war for independence was the fact that we had in Paris a wise and great statesman and diplomat in the person of Benjamin Franklin. The invaluable services of that supremely great man have been much underestimated.

It will be observed by those familiar with the contemporaneous administrative organization of England that the various boards and committees created by the Continental Congress, even in their names, followed very closely similar English boards and commissions, but there were discerning individuals, who ably seconded Washington in his repeated views to Congress, that while committees and boards were useful for deliberation and consultation, they were fundamentally incapable of that vigorous continuity of action required by the desperate straits of the country. Robert Morris had stated in a letter as early as December 16, 1776, to the Committee of Secret Correspondence of Congress:

"If Congress means to succeed in this contest, they must pay good executive men to do their business as it ought to be done, and not lavish millions away by their own mismanagement. I say mismanagement because no man living can attend the daily deliberations of Congress and do executive parts of business at the same time."

Jared Sparks in his *Gouverneur Morris* said of this legislative committee and board system of conducting executive business:

"The manner of transacting the various forms of government in Congress by committees, adopted at first from necessity, and continued because it was difficult afterwards to effect a change, became at length so complicated and perplexing as to demand serious attention and speedy remedy. Congress exercised at the same time legislative and executive powers; they passed resolves in their capacity of representatives, and executed them by committees chosen from their own members. The committees were in a measure irresponsible bodies; much was left undone and more was done imperfectly. These evils were early perceived by Congress and they grew more and more apparent daily."

There was an almost total absence of any continuity of action in the administrative organizations of the Continental Congress. With a constantly changing membership, there was a constant change in policies, and it is possible that Hamilton had this condition in mind when he insisted in the *Federalist* that no continuity of action was possible except by the retention in office of men in a separate executive department. Reorganizations, with changes of personnel, were frequent and chaotic conditions resulted, even worse than at the present day, when some administrative officer, newly appointed to a supervisory public office, concerning whose duties and policies he knows next to nothing, almost contemporaneously with his appointment announces that he is going to make sweeping reorganizations. It was after repeated evidences of this failure of committees and boards to function properly and repeated recommendations of the leading statesmen, both in and out of Congress, that the jealously guarded executive functions were surrendered by Congress. This lends emphasis to the fact that in our day the pendulum has swung so far the other way that Congress has surrendered to the Chief Executive and his Tariff Commission its purely legislative duties of taxation, thus turning back upon the experience and great traditions of

the English-speaking race for a thousand years. This revolutionary change will be discussed in Chapter XV.

The stern realities of war had brought some disposition for a change. Early in 1779 Congress instructed its representatives abroad to obtain and forward copies of decrees and statutes setting up the administrative machinery of European nations, but it was not until August 29, 1780, that it took any definite steps toward an improved system of administration by appointing a committee of five members to formulate and report a plan for a revision of the executive work of the government. Today, one hundred and fifty-two years later, we are engaged in the same endless task. It is the labor of Hercules and the torture of Sisyphus.

Even before the appointment of this committee, a bitter contest was in progress between two schools of thought, one led by Samuel Adams, firebrand of the Revolution, ably assisted by Richard Henry Lee and John Adams, and the other, by the youthful Alexander Hamilton, one of the most practical statesmen in our history. He desired to cement our victories on the seas and battlefields by establishing a strong central government. This struggle between the advocates of decentralization, or little government, and the advocates of a strong central government continued throughout the first century of our existence, but now the irresistible tendency is towards centralization. Hamilton said in a letter in 1780 to Robert Morris:

"Congress has too long neglected to organize a good scheme of administration, and throw public business into proper executive departments. For Commerce I prefer a board; but for most other things, single men. We want a Minister of War, a Minister of Foreign Affairs, a Minister of Finance, and a Minister of Marine. There is always more decision, more dispatch, more secrecy, more responsibility, when single men, than when bodies are concerned. By a plan of this kind we should blend the advantages of a

Monarchy and of a Republic, in a happy and beneficial union. Men will only devote their lives and attentions to mastering a profession, on which they build reputation and consequence, which they do not share with others."

Hamilton was a confirmed monarchist. He despised the people and distrusted their legislative agencies. Washington, whose political philosophy was more moderate, deep and accurate, threw himself into the struggle with a letter of December 20, 1780, to James Duane:

"If Congress suppose that boards composed of their body, and always fluctuating, are competent to the great business of war (which requires not only close application but a constant and uniform train of thinking and acting) they will most assuredly deceive themselves. Many, many instances might be deduced in proof of this, but to a mind so observant as yours, there is no need to enumerate them." \*

From this conflict in the Continental Congress there emerged the Department of Foreign Affairs on January 10, 1781, to which Robert Livingston was first appointed after a delay of some seven months. Within less than a month thereafter there were created similar departments for War, Finance and Marine with authority in the heads of the respective departments to exercise complete supervision over their departments and to execute the ordinances of Congress.

It is not within the scope of this book to set forth the trying experience of Livingston as Minister of Foreign Affairs or of Robert Morris as Superintendent of Finance, who also had to exercise the duties of Secretary of Marine, or of Benjamin Lincoln and Henry Knox as Secretaries of War. It is sufficient to say that their difficulties were

\* Mr. Learned in his *The President's Cabinet* says:

"There can be no doubt that the principle of holding one man responsible for the great administrative tasks was approved by most of the liberal and constructive statesmen, such men, for example, as Jay, Washington, the two Morrises, and Alexander Hamilton."

many, due to the critical and close supervisory attitude of Congress and the lack of finances, but the departments continued until the Congress of the Confederation had passed into history and a Congress was organized under the Constitution of the United States in 1789.

Strange as it may seem, in view of the conflict which had raged in and out of Congress from 1776 to at least 1785, with respect to the conduct of the administrative business of the United States, few provisions were made in the Constitution as to the manner in which it should be conducted. It made a general provision in its grant to the President of "executive power" and in the power to Congress to make provisions for the control of "any department or officer thereof." Article II, section II, paragraph 2, provided that "Congress may by law vest the appointment of such inferior officers, as they may think proper in the President alone or in the Heads of Departments," while paragraph 1 of the same section authorized the President to "require the opinion, in writing, of the principal officers in each of the executive Departments upon any subject relating to their respective offices." These references to the administrative departments must be read with section I, paragraph 1, of the same article that "the executive power shall be vested in a President of the United States of America."

However, the matter had not escaped attention in the Constitutional Convention and there were many plans submitted by the members of that convention for surrounding the Chief Executive with various kinds of councils. Hamilton's plan, submitted to the convention on June 18, provided that the Chief Executive should "have the sole appointment of the heads or chief officers of the departments of Finance, War and Foreign Affairs," while in the debate of July 19 Morris stated that "there must be certain great officers of State; a minister of finance, of war, of foreign affairs, etc.," and that he presumed these officers "will exercise their functions in subordination to the Executive. . . . Without these ministers the Executive can do nothing of consequence." In fact, it seemed to be assumed by most, if not all members, that there

would be executive departments and the chief struggle arose over the question whether the Constitution should constitute the principal heads thereof into a Council to advise with the Chief Executive and to share with him the revision of such bills as Congress might pass instead of vesting such authority in the President alone. The provision that the President may require the opinions in writing of the heads of the departments was that of Charles Pinckney, who thought that the President might be authorized to call for the advice of the heads of the departments as he might choose, thus defeating the suggestion of Gouverneur Morris that there be a council, composed of the Chief Justice of the Supreme Court, and the Secretaries of Domestic Affairs, Foreign Affairs, Finance, War, Marine, and Commerce, to advise with the President, and the suggestion of Mason that there should be established a Privy Council of six members, to be chosen for six years by the Senate, two from each section of the nation. Mason in refusing to sign the Constitution gave as one of his reasons the failure to establish such a Council and said that the lack of such a Council was "a thing unknown in any safe and regular government. He (the President) will therefore be unsupported by proper information and advice, and will generally be directed by minions and favorites; or he will become a tool to the Senate, or a Council of State will grow out of the principal officers of the great departments; the worst and most dangerous of all ingredients for such a council in a free country." He thus underestimated the executive power of the President.\*

The waste, extravagance, and general inefficiency of both the Continental Congress and the Congress of the Confederation, which attempted to conduct public business through their members serving on boards and commissions, was such, that it is a miracle that the War for Independence was at length won.

\* Abraham Lincoln rejected the unanimous advice of his Cabinet on issuing the Emancipation Proclamation, and if the deliberations of the Cabinet were always known, it would appear that on many occasions other Presidents have disregarded the advice of the so-called Cabinet. Indeed, Cabinet in our nation is a courtesy title.

## CHAPTER IV

### THE RISE OF BUREAUCRACY

"There ought to be some men moving about somewhere—and so there are!" she added in a tone of delight, and her heart began to beat quick with excitement as she went on. "It's a great huge game of chess that's being played—all over the world—if this is the world at all, you know. Oh, what fun it is! How I wish I was one of them! I wouldn't mind being a Pawn, if only I might join—though of course I should like to be a Queen best."—ALICE IN WONDERLAND.

WHEN in 1789 the curtain first rose upon a new form of government for the American Commonwealth, it consisted of a roll of parchment, George Washington, and Congress. After providing for revenues by the passage of a tariff bill, the creation of a bureaucracy began when James Madison, among his contemporaries the deepest student in the science of government, arose in his place in the House of Representatives and submitted a motion "that there shall be established an Executive Department to be denominated the Department of Foreign Affairs, with an official to be called the Secretary to the Department of Foreign Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate; and to be removable by the President." Similar motions were made for the establishment of a Treasury and War Department, with a motion by Mr. Vining for the establishment of a Domestic Department.

Madison's motion to establish a Foreign Department was first considered. There was no objection to the creation of such a Department with a single executive officer, to be denominated a Secretary, but there was serious disagreement over the manner of his removal. The clause "and to be removable by the President" provoked a prolonged debate of almost six days, pitched on as high an intellectual plane as possibly has since been reached in any session of Congress. It was a fateful debate; for it involved the question whether the federal bureaucracy would be congressional or executive.

The issue was nothing less than the equilibrium of power

between the Legislative and Executive departments of the Government, but nowhere in that debate was there any extended consideration given to Montesquieu's *De l'Esprit des Lois*, issued in 1748 as the result of a short sojourn in England. Montesquieu attributed the greatness of England to the division of its government into Executive, Legislative and Judicial branches, but he either overlooked, or ignored, the fact that members of Parliament were the actual heads of the different executive branches of the British government and that the House of Lords was the highest appellate judicial tribunal in the English judicial system. Many of the men in that first Congress had studied law at the Inns of Court and they knew that Montesquieu was no more an authority on the English system of Government than is today George Bernard Shaw on the comparative merits of Soviet Russia and the American system, which he recently attempted to discuss without having spent a single day in America and but ten days in Russia! The author owes the august shade of Montesquieu a profound apology for this analogy. Montesquieu, even if his comprehension of the English system was superficial, was a genius, while Shaw is a flippant and shallow satirist, and the most persistent self-advertiser in the annals of literature.

The members of that first Congress took as their text Article II, section 1, of the Constitution that the "executive power shall be vested in a President of the United States of America," and section 2 provides that "he may require the opinion, in writing, of the principal officer in each of the executive Departments, upon any subject relating to the duties of their respective offices," together with the further provision that "Congress may by law vest the appointment of such inferior offices as they think proper, in the President alone, in the courts of law or in the heads of departments." The Constitution was otherwise silent as to whether there should be executive departments of the Federal government, except in Article I, that Congress should make all laws for the Government of the United States or any department thereof. The importance of this fact will be shown in a subsequent chapter.

Both the Continental Congress and the Congress of the Confederation had exercised the power of removal without question—there was then no chief executive—and many of the members of that first Congress under the Constitution had been members of both the Congresses prior to the Constitution and of the Constitutional Convention.

The phrase “and to be removable by the President,” had been inserted in the motion by Madison, but he vigorously supported a motion to strike it out. He dwelt upon the fact that the Constitution made definite distribution of legislative, executive and judicial power among the three departments of the Government and said:

“I suppose it will be readily admitted, that so far as the Constitution has separated the powers of these departments, it would be improper to combine them together; and so far as it has left any particular department in the entire possession of the powers incident to that department, I conceive we ought not to qualify them further than they are qualified by the Constitution.”

Madison then discussed these three departments, one by one, and carefully pointed out the nature and power of each, and argued that the Constitution had vested in the President the “executive power” and that, while the Senate had power to pass upon his appointments, unless in the case of inferior officers the law should otherwise direct, Congress had not the constitutional right to extend this exception to his authority, saying:

“If the Constitution has invested all executive power in the President, I venture to assert that the legislature has no right to diminish or modify his executive authority.

The question now resolves itself into this: Is the power of displacing an executive power? I conceive that if any power whatsoever is in its nature executive, it is the power of appointing,

overseeing, and controlling those who execute the laws. If the Constitution had not qualified the power of the President in appointing to office, by associating the Senate with him in that business, would it not be clear that he would have the right, by virtue of his executive power, to make such appointments? Should one be authorized, in defiance of that clause in the Constitution 'the executive power shall be vested in a President,' to unite the Senate with the President in the appointment to office? I conceive not. If it is admitted that we should not be authorized to do this, I think it may be disputed whether we have a right to associate with them in removing persons from office, the one power being as much of an executive nature as the other; and the first only is authorized by being excepted out of the general rule established by the Constitution in these words, 'the executive power shall be vested in a President.'

The judicial power is vested in a Supreme Court; but will gentlemen say 'the judicial power can be placed elsewhere unless the Constitution has made an exception'? The Constitution justifies the Senate in exercising a judiciary power in determining on impeachments; but can the judicial power be further blended with the powers of that body? They can not. I, therefore, say that it is incontrovertible, if neither the legislative nor judicial powers are subjected to qualifications, other than those demanded in the Constitution, that the executive powers are equally unabatable as either of the actors; and inasmuch as the power of removal is of an executive nature, and not affected by any constitutional exception, it is beyond the reach of the legislative body."

Madison returned to the subject on June 17, 1789, the following day, and said:

"If nothing more was said in the Constitution than that the President, by and with the advice and consent of the Senate, should appoint to office, there would be great force in saying that the power of removal resulted by a natural implication from the power of appointing. But there is another part of the Constitution, no less explicit than the one on which the gentleman's doctrine is founded; it is that part which declares that the executive power shall be vested in a President of the United States. The association of the Senate with the President in exercising that particular function, is an exception to this general rule; and exceptions to general rules, I conceive, are ever to be taken strictly. But there is another part of the Constitution, which inclines, in my judgment, to favor the construction I put upon it; the President is to take care that the laws be faithfully executed. If the duty to see the laws faithfully executed be required at the hands of the Chief Magistrate, it would seem that it was generally intended he should have the species of power which is necessary to accomplish that end. Now, if the officer when once appointed is not to depend upon the President for his official existence, but upon a distinct body (for where there are two negatives required, either can prevent the removal), I confess I do not see how the President can take care that the laws be faithfully executed. It is true, by a circuitous operation he may obtain an impeachment, and even without this it is possible he may obtain the concurrence of the Senate, for the purpose of displacing an officer; but would this give that species of control to the executive magistrate which seems to be required by the Constitution?"

He then dwelt upon the fact that if the President does remove a man from office he cannot fill the vacancy with-

out the approval of the Senate. In this and other ways ample check is placed upon any temptation to misuse his powers.

Madison forcefully summed up the great issue by adding:

"Vest this power in the Senate jointly with the President, and you abolish at once that great principle of unity and responsibility in the executive department, which was intended for the security of liberty and the public good. If the President should possess alone the power of removal from office, those who are employed in the execution of the law will be in their proper situation, and the chain of dependence be preserved; the lowest officers, the middle grade, and the highest will depend, as they ought, on the President, and the President on the community."

Other Representatives dwelt further upon the same point. Fisher Ames, of Massachusetts, said that the Constitution provided that the executive power shall be vested in the President and that—

"Under these terms all the powers properly belonging to the executive department of the Government are given, and such only taken away as are expressly excepted. If the Constitution had stopped here, and the duties had not been defined, either the President had had no powers at all, or he would acquire from that general expression all the powers properly belonging to the Executive department. In the Constitution the President is required to see the laws faithfully executed. He can not do this without he has a control over officers appointed to aid him in the performance of his duty. Take this power out of his hands, and you virtually strip him of his authority; you virtually destroy his responsibility. . . .

The executive powers are delegated to the President, with a view to have a responsible officer to superintend, control, inspect, and check the officers necessarily employed in administering the laws. The only bond between him and those he employs is the confidence he had in their integrity and talents; when that confidence ceases, the principal ought to have power to remove those whom he can no longer trust with safety."

Goodhue, of the same State, declared that it was the peculiar duty of the President to watch over the executive officers but that his supervision would be useless unless he had power to correct any abuses which he might discover. And Vining of Delaware added:

"The Senate are combined with the President to aid him in the choice of his officers. The officers are not the agents of the Senate; they do not act for the Senate; they act for the Executive Magistrate. If you give the Senate a power in the removal, you give them an agency in the Executive business which the Constitution never contemplated."

The grave inconveniences, which would attend the submission to the Senate of the question whether an officer might be removed from office, were also dwelt upon by a number of members. Madison, for example, pointed out that it would be necessary for the Senate to be constantly in session in order to be prepared to give prompt assent to removals. Sedgwick discussed the delays and expense which would result before the consent of the Senate to a removal could be secured. Other members pointed out that the government would suffer no great danger from the removal of a worthy man if the Senate must be consulted prior to the appointment of his successor but that if it were necessary to retain an unworthy officer, one whose presence in power might even endanger the safety of the Government, great mischief might result.

Even in a normal case, the interposition of the Senate would be destructive of the morale of the Executive Department. Boudinot argued:

"If the President complains to the Senate of the misconduct of an officer, and desires their advice and consent to the removal, what are the Senate to do? Most certainly they will inquire if the complaint is well founded. To do this, they must call the officer before them to answer. Who, then, are the parties? The supreme executive officer against his assistant; and the Senate are to sit as judges to determine whether sufficient cause of removal exists. Does not this set the Senate over the head of the President? But suppose they shall decide in favor of the officer, what a situation is the President then in, surrounded by officers with whom, by his situation, he is compelled to act, but in whom he can have no confidence, reversing the privilege given him by the Constitution, to prevent his having officers imposed upon him who do not meet his approbation?" \*

During the course of the debate several members had spoken in favor of a recognition of the power of removal in express terms, saying that, even if the power did not

\* Sedgwick dwelt further upon the same problem:

"How is the question to be investigated? Because, I presume, there must be some rational rule for conducting this business. Is the President to be sworn to declare the whole truth, and to bring forward facts? or are they to admit suspicion as testimony? or is the word of the President to be taken at all events? If so, this check is not of the least efficacy in nature. But if proof be necessary, what is then the consequence? Why, in nine cases out of ten, where the case is very clear to the mind of the President that the man ought to be removed, the effect can not be produced, because it is absolutely impossible to produce the necessary evidence. Are the Senate to proceed without evidence? Some gentlemen contend not. Then the object will be lost. Shall a man, under these circumstances, be saddled upon the President, who has been appointed for no other purpose but to aid the President in performing certain duties? Shall he be continued, I ask again, against the will of the President? If he is, where is the responsibility? Are you to look for it in the President, who has no control over the officer, no power to remove him if he acts unfeelingly or unfaithfully? Without you make him responsible, you weaken and destroy the strength and beauty of your system. What is to be done in cases which can only be known from a long acquaintance with the conduct of an officer?"

otherwise exist, Congress could bestow the power upon the President. The original bill, however, was amended so as to prevent the placing of such a construction upon the Constitution. Congress took pains not to grant any power of removal to the President. It expressly recognized, however, that he already possessed a power of removal which rested not upon legislation but upon the Constitution itself. The bill as amended was passed by a vote of twenty-nine to twenty-two and was sent to the Senate.

Until 1794 the doors of the Senate were kept closed, with a single exception, throughout all the legislative as well as the executive proceedings and therefore but little is known of the discussions which took place in that branch of Congress in 1789. Had this wise custom been followed to this day, the Nation would have been spared an infinite amount of demagoguery, for it is the gallery that corrupts the intellectual honesty of ambitious Senators and has brought about the present situation, when the brake on radical legislation must be applied, if at all, in the House. For the debate on the bill for the establishment of the Department of Foreign Affairs, which lasted from July 14th to July 18th, we must rely almost entirely upon notes, taken by Vice President Adams, probably for the purpose of guiding his judgment, if he should be called upon to cast the deciding vote. It is true that the *Journal* of William Maclay contains some discussion of the question. Senator Maclay contended that officers could be removed only by impeachment, and that under the proposed law the chief clerk, who was to be appointed without consultation with the Senate, would become the principal in office upon the removal of the Secretary, and the Senate could not force the President to name a new officer. Beyond those points we can more profitably rely upon the Vice President's notes than upon Maclay's vivacious *Journal*.

According to these notes, Ellsworth of Connecticut and Paterson of New Jersey spoke effectively in support of the President's power of removal.

Paterson contended that exceptions are to be construed strictly. "This is an invariable rule."

Read of Delaware, who had been a member of the Constitutional Convention and a signer of the Constitution, declared:

"The President is to take care that the laws be faithfully executed. He is responsible. How can he do his duty or be responsible, if he can not remove his instruments?"

It is not an equal sharing of the power of appointment between the President and Senate. The Senate are only a check to prevent impositions on the President."

Butler of South Carolina, who had been a member of the Convention, opposed any concession that the President possessed a power of removal without consultation with the Senate, saying that "this power of removal would be unhinging the equilibrium of power in the Constitution." Johnson of Connecticut, also a member of the Convention, contended that the grant of executive power was so indefinite in its meaning that it was impossible to base any argument upon that grant.

Apparently the most vehement opponents of the measure were the two Senators from Virginia, neither of whom had been a member of the Constitutional Convention, but both of whom had vigorously opposed the ratification of the Constitution. Grayson urged that the removal of officers would not be palatable, and added other arguments equally vague and unconvincing. Lee said:

"The federal government is limited; the legislative power of it is limited; and, therefore, the executive and judicial must be limited."

Possibly the brief notes made by Vice President Adams do not do full justice to all of the arguments. They show, however, how far those arguments impressed an able statesman, who was giving careful attention to both sides of this great debate. His solicitude was justified, for the Senate divided equally on the issue, and therefore Vice

President Adams cast the deciding vote in favor of the legislation.

By this legislation Congress recognized that the President's power to make removals arose from the Constitution itself and not from Congress. As the debates showed, moreover, this power is not simply an incident of his power to nominate. It rests also upon the grants to him of the "executive power" and of the power as well as the duty to take care that the laws be faithfully executed. The President's power to make removals is more extensive than his power to make appointments. It rests upon broader foundations.

The law, which was then enacted, received the approval of George Washington, the President who had presided over the deliberations of the Constitutional Convention, and became the act of July 27, 1789, 1 Stat. 28, 29, and the principles which it recognized were thereafter accepted without question for three decades. This act was amended by the act of September 15, 1789, 1 Stat. 68, 69, to include certain of the functions urged by Mr. Vining and the name was changed to the Department of State. The Congress then proceeded to create other Departments.

The Treasury and War Department bills, which followed the essential features of the bill to establish the Foreign Department insofar as the Executive power of removal was concerned, were then taken up in Congress and soon enacted into law. The statute establishing the War Department was the act of August 7, 1789, 1 Stat. 49, 50, and the statute establishing the Treasury Department was the act of September 2, 1789, 1 Stat. 65, 67. However, this statute, establishing a Treasury Department with a secretary in charge, did not become law without an extended argument that, unlike the other departments, this department should be headed by a board of three commissioners. Mr. Gerry demanded to know "what the reasons were that should induce the committee to adopt a different system than that which had been found most beneficial to the United States." Mr. Gerry argued that the duties of the Treasury Department were too arduous and important to be confided to a single

individual and insisted that the procedure under the Congress of the Confederation should be followed in creating a board of Commissioners because (1) such a committee afforded an opportunity to select men from all sections of the country and (2) it permitted a division of labor, each man doing that for which he was best fitted, and he pointed out the troubles which the Congress of the Confederation had had with Robert Morris as Superintendent of Finance, which had resulted in his replacement by a Board of Commissioners. Mr. Wadsworth, on the other hand, said that he did not remember a "single instance in any board, that I found them to have a system that would give even a tolerable satisfaction; there appeared a want of confidence in the members of them all; they seemed to have no fixed principle to guide them nor responsibility for their conduct." Thus Wadsworth anticipated the confusing councils of the Wickersham Commission, and other commissions, which are appointed to solve controversial questions.

After considerable debate, Mr. Gerry's argument for a board to control the Treasury was rejected, and the bill was passed to place the Treasury under a Secretary, with this difference that while all of the other secretaries were required to report to the President, the Secretary of the Treasury was required to report to Congress—a distinction which prevails to this day. Possibly as a concession to Gerry and his adherents, the organization of the Treasury differed from the organization of the other two departments in the establishment of bureaus. The Comptroller, Auditor, Treasurer and Register of the Treasury, who headed these bureaus, were not to be appointed by the Secretary but by the President "by and with the advice and consent of the Senate" and were supposed to act as checks, not only on the Secretary of the Treasury but on the two other departments of the Government. So well was the Treasury organized that no important fundamental changes were made therein for more than a century and no serious derelictions of duty have ever been traced either to the Secretary of the Treasury or the accounting officers, where the latter were required to function in the

settlement of accounts and claims against the United States.

No Post Office Department was established by the first Congress. The American Post Office had originated in a patent granted on February 17, 1691, to Thomas Neale and Andrew Hamilton—who had been appointed by Neale as Postmaster General for America and confirmed by the British joint Postmaster General on April 4, 1692. Neale was the first individual to serve all of the colonies. The Post Office service was purchased from Neale by the British Government in 1707, and was operated under the close supervision of the British Government. Benjamin Franklin was Postmaster General under the Crown from 1753 to 1774, when he was removed. After the ordinance of June 26, 1775, Franklin was again appointed Postmaster General to serve until his successor was appointed. The Post Office affairs were left largely in his control, until he resigned in 1776 to go to France as our Minister and his son-in-law, Richard Bache, was appointed to take his place. Due to complaints as to service, Congress removed Bache in 1782 and appointed Ebenezer Hazard and under an ordinance of October 10, 1782, the Post Office was conducted until the Constitution came into operation.

The first House of Representatives instead of creating a Post Office Department, as it had created other departments, continued the Post Office, as organized under the Congress of the Confederation, but the Senate did not concur in that opinion, with the result that the act of September 22, 1789, 1 Stat. 70, was passed, giving the general supervision of the Post Office to a Postmaster General, who was made subject to the direction of the President. The Post Office Department was not created until May 8, 1794, 1 Stat. 354, 366. Amendatory acts of 1797 and 1799 required the Postmaster General to make reports on certain matters direct to Congress, evidencing its determination to pursue the policy of the Congress of the Confederation in keeping close touch with that establishment as a factor in the revenue and political systems of the United States. It was not until 1829, when President Andrew Jackson, recognizing the possibilities of post office

patronage to reward his adherents, invited the Postmaster General to enter the Cabinet. Since then his Department has been most potent in political contests and often the Postmaster General has been, *ex-officio*, the President's political manager.

The first Congress created a new office, which was unknown to the Congress of the Confederation, that of Attorney General. He had no department and did not have one until 1870. The Judiciary Act of September 24, 1789, provided, among other things, for the appointment of an Attorney General, and doubtless had in mind the Attorney General of England, whose office was created in the reign of Edward I, but the Attorney General of the United States was unlike his English prototype, being from the first a member of the Cabinet and an adviser in legal affairs of both the President and the secretaries of the departments.

The Navy Department, with a secretary as its immediate chief, was not created until April 30, 1798. The marine affairs of the Confederation had been transferred after 1789 from the Treasury Board to the Secretary of War and it was probably due to the increasing difficulties, which the Nation had at this time with both England and France, that the conclusion was reached to increase the size of the navy and to create the office of Secretary of the Navy to supervise its construction and operation. The statute creating the new department was framed along the lines of the earlier statutes, establishing the other three departments of the Federal Government and making the Secretary subordinate to the President, as well as the later statutes, which created the Department of the Interior, Department of Agriculture, Department of Commerce, and the Department of Labor.

The statutes thus enacted during our early days of constitutional government deliberately adopted the principle that there should be, not boards or commissions, but single individuals at the head of the respective departments of the government, though from 1815 to 1842 the administrative duties of the Navy Department were almost wholly discharged by a board of three commissioners,

created by the act of February 7, 1815, 3 Stat. 202, who were in a measure subordinate to the Secretary of the Navy. The sagacity of these executives can be measured by the statement, for which there is some contemporaneous authority, although it may be a political canard, that President Jefferson's chief naval executive proposed the formation of a collapsible navy, which could be stored in times of peace and assembled and transported to tide-water in the event of war.

These early acts of 1789 also show that the heads of the administrative branches were made directly responsible to the President, except that the Secretary of the Treasury and in some instances the Postmaster General, were required to render their annual reports to Congress rather than through the Chief Executive. The heads of departments were thus made to realize that they were primarily responsible to the President and as early as the second session of that First Congress it refused on two occasions to permit secretaries of the departments to report in person to that body.

The explanation has its roots further back in American history, as will be demonstrated in a subsequent chapter.

The departments were thus created but the great and vital question of the power to remove remained to confuse the public life of America for more than a century. How it was finally decided 136 years later will be told in the next chapter.

## CHAPTER V

### THE END OF A CENTURY-OLD CONTROVERSY

Myself when young did eagerly frequent  
Doctor and Saint, and heard great Argument  
    About it and about; but evermore  
Came out by the same Door as in I went.

—OMAR KHAYYAM.

THE shades of James Madison, Andrew Jackson, Andrew Johnson and Woodrow Wilson, as well as other statesmen, who had taken part in the century-old controversy as to whether there should be a bureaucracy, controlled either through the power of removal by the President alone or by the legislative control of the Executive's power of removal, stood behind the Ionic pillars of the Supreme Court of the United States, when the Court finally decided the question. On April 13, 1925, the author, as Solicitor General of the United States, commenced his argument in that great Court to defend the Executive power of removal free from legislative interference. George Wharton Pepper, then a Senator from the State of Pennsylvania, and a distinguished member of the historic bar of Philadelphia, defended the asserted legislative right of Congress to restrict and control the President in the exercise of such power.

Little was said in the two-day argument or in the later exceptionally voluminous opinions of the Court that had not been fully anticipated and eloquently stated in the First Congress.

No political struggle has been more continuous in our history than that between Congress and the President on this subject of the power of removal. Washington and all his successors as President have insisted upon their independence in the matter of removals and Congress, when occasion required, has been equally insistent as to its powers over the President under the terms of various statutes which sought to regulate his power of removal.

The conflict of authority first became acute in the administration of Andrew Jackson. He believed that the

second United States Bank, which had been incorporated by the Federal Government and which acted as the depository of its public funds, was both a menace to the country and to his own political future. He obtained an opinion from Roger Brooks Taney, then Attorney General of the United States, that the President could direct the Secretary of the Treasury to withdraw all public funds from the United States Bank, but Duane, then Secretary of the Treasury, refused to comply with the direction. Jackson removed him from office in as summary a manner as John Adams dismissed Pickering as Secretary of War in May, 1800, when Pickering had refused to resign at Adams' request.\* The Senate was in recess and Jackson promptly transferred Taney from the office of Attorney General to that of Secretary of the Treasury, and Taney immediately withdrew the public funds from the United States Bank.

When Congress convened, Jackson had to send to the Senate the nomination of Taney to be Secretary of the Treasury and this gave the great triumvirate of Webster, Clay, and Calhoun the opportunity to open the attack on Jackson and Taney. Clay introduced condemnatory resolutions, which were debated three months and then passed by the Senate. While the resolutions were pending, the Senate requested Jackson to give it information as to the charges on which Duane was removed from his office as Secretary of the Treasury, but Jackson refused to furnish such information, saying:

"The President in cases of this nature possesses the exclusive power of removal from office, and, under the sanctions of his official oath and of his liability to impeachment, he is bound to exercise it whenever the public welfare shall require. If, on the other hand, from corrupt motives he abuses this power, he is exposed to the same responsibilities. On no principle known to our institutions can he be required to account for

\* Adams, as Vice President, had cast in the First Senate the deciding vote to sustain the President's power of removal.

the manner in which he discharges this portion of his public duties, save only in the mode and under the forms prescribed by the Constitution."

Daniel Webster said in the debate on a bill to repeal the act of May 15, 1820, and to limit the terms of certain civil servants, which had been introduced because of the removal of Duane, that:

"I think, then, sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been regarded as a part of it, and exercised by the same hands. I think, consequently, that the decision of 1789, which implied a power of removal separate from the appointing power, was erroneous.

But I think the decision of 1789 has been established by practice, and recognized by subsequent laws, as the settled construction of the constitution; and that it is our duty to act upon the case accordingly, for the present, without admitting that Congress may not hereafter, if necessity shall require it, reverse the decision of 1789. I think the Legislature possesses the power of regulating the condition, duration, qualification, and tenure of office, in all cases where the constitution has made no express provision on the subject."

Henry Clay argued with characteristic vehemence:

"We can now deliberately contemplate the vast expansion of executive power under the present administration, free from embarrass-

ment. And is there any real lover of civil liberty who can behold it without great and just alarm? Take the doctrines of the protest and the Secretary's report together, and, instead of having a balanced Government with three co-ordinate departments, we have but one power in the state. According to those papers, all the officers concerned in the administration of the laws are bound to obey the President. His will controls every branch of the administration. No matter that the law may have assigned to other officers of the Government specially defined duties; no matter that the theory of the constitution and the law supposes them bound to the discharge of those duties according to their own judgment, and under their own responsibility, and liable to impeachment for malfeasance; the will of the President, even in opposition to their own deliberate sense of their obligations, is to prevail, and expulsion from office is the penalty of disobedience!

The basis of this overshadowing superstructure of executive power is the power of dismission, which it is one of the objects of the bill under consideration, somewhat to regulate, but which it is contended by the supporters of executive authority is uncontrollable. The practical exercise of this power, during this administration, has reduced the salutary cooperation of the Senate, as approved by the constitution in all appointment, to an idle form. Of what avail is it that the Senate shall have passed upon a nomination, if the President, at any time thereafter, even the next day, whether the Senate be in session or in vacation, without any known cause, may dismiss the incumbent? . . . No one can carefully examine the debate in the House of Representatives in 1789, without being struck with the superiority of the argument on the side of the minority, and the unsatisfactory nature of

that of the majority. How various are the sources when the power is derived! Scarcely any two of the majority agree in their deduction of it. Never have I seen, from the pen or tongue of Mr. Madison, one of the majority, anything so little persuasive or convincing. He assumes that all executive power is vested in the President . . . In the silence of the constitution, it would have devolved upon Congress to provide by law for the mode of appointing to office; and that in virtue of the clause, to which I have already adverted, giving to Congress power to pass laws necessary and proper to carry on the Government."

John C. Calhoun, with his subtle and powerful intellect, argued:

"I ask the Senators to open the constitution, to examine it, and to find, if they can, any authority given to the President to dismiss a public officer. None such can be found; the constitution has been carefully examined, and no one pretends to have found such a grant. Well, then, as there is none such, if it exists at all, it must exist as a power necessary and proper to execute some granted power; but if it exists in that character, it belongs to Congress, and not to the Executive. I venture not the assertion hastily. I speak on the authority of the constitution itself, the express and unequivocal authority which can not be denied nor contradicted. Hear what that sacred instrument says: 'Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers,' (those granted to Congress itself,) 'and all other powers vested by this constitution in the Government of the United States, or in any department or office thereof.' Mark the fullness of expression. Con-

gress shall have power to make all laws, not only to carry into effect the powers expressly delegated to itself, but those delegated to the Government or any department or office thereof; and of course comprehends the power to pass laws necessary and proper to carry into effect the powers expressly granted to the Executive Department. It follows, of course, to whatever express grant of power to the executive the power of dismissal may be supposed to attach, whether to that of seeing the law faithfully executed, or to the still more comprehensive grant, as contended for by some, vesting executive powers in the President, the mere fact that it is a power appurtenant to another power, and necessary to carry it into effect, transfers it, by the provisions of the constitution cited, from the executive to Congress, and places it under the control of Congress, to be regulated in the manner which it may judge best."

Jackson had a friendly majority in the House of Representatives and the only immediate effect was the condemnatory resolutions placed on the journals of the Senate, where they remained until the closing days of Jackson's administration, when a Democratic Senate, under the leadership of Benton, who in his younger days had fought a duel with Jackson, formally voted to expunge the resolutions.\*

The aftermath of the Civil War again brought up the question. Congress was strongly hostile to President Andrew Johnson's reconstruction policy, and it undertook in 1867 to embarrass him by passing over his veto the Tenure of Office Act, which provided in substance that various civil officers (and the terms were broad enough to include all the President's cabinet) should be entitled to continue in office until their respective successors were appointed by the President with the advice and consent

\* President Cleveland sent, on March 1, 1886, a similar refusal to the Senate of the reasons why he had removed certain administrative officers.

of the Senate. The contention was that no matter how seriously an officer of the Government defied the President, such officer could not be removed unless the President obtained the consent of the Senate through the confirmation of a successor.

President Johnson was fighting with his back to the wall. He vetoed the bill and in a dignified statement registered for posterity his reasons for doing so, saying, in pertinent part:

"The events of the last war furnished a practical confirmation of the wisdom of the Constitution as it has hitherto been maintained in many of its parts, including that which is now the subject of consideration. When the war broke out, rebel enemies, traitors, abettors, and sympathizers were found in every Department of the Government, as well in the civil service as in the land and naval military service. They were found in Congress and among the keepers of the Capitol; in foreign missions; in each and all the Executive Departments; in the judicial service; in the post office, and among the agents for conducting Indian affairs. Upon probable suspicion they were promptly displaced by my predecessor, so far as they held their offices under executive authority, and their duties were confided to new and loyal successors. No complaints against that power or doubts of its wisdom were entertained in any quarter. I sincerely trust and believe that no such civil war is likely to occur again. I can not doubt, however, that in whatever form and on whatever occasion sedition can raise, an effort to hinder or embarrass or defeat the legitimate action of this Government, whether by preventing the collection of revenue, or disturbing the public peace, or separating the States, or betraying the country to a foreign enemy, the power of removal from office by the Executive, as it has heretofore

existed and been practiced, will be found indispensable."

In the exercise of this executive power, President Johnson removed Edwin M. Stanton from his office as Secretary of War—notwithstanding the terms of the Tenure of Office Act—whereupon there occurred the only attempt in the history of the United States to remove a President from his office through impeachment proceedings.

Then followed a notable chapter in American history, not only because of the consequences to the United States, had a President been removed by a hostile majority in Congress, but because of the ability of counsel conducting the impeachment proceedings. Johnson was found guilty by a majority of the Senate but as the Constitution required a two-thirds vote, he was acquitted by a single vote. The defeat of Johnson at the next presidential election and the elevation of General Grant to the White House ended for a time the struggle. Almost immediately thereafter the more obnoxious features of the Tenure of Office Act were repealed by the act of April 5, 1869, though this did not satisfy President Grant, who recommended in his first Annual Message to Congress that the entire act be repealed.

While Congress had from time to time enacted statutes purporting to limit the President's powers of removal, the question did not again arise as an issue until the administration of President Wilson, who summarily removed on February 2, 1920, a postmaster at Portland, Oregon, who had been appointed on July 21, 1917, for a four-year term under a statute which provided:

"Postmasters of the first, second, and third classes shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold office for four years unless sooner removed or suspended according to law."

President Wilson did not obtain the consent of the Senate to the removal, though it was then in session, nor did

he at that session send to the Senate the nomination of a successor. On August 26, 1920, the Senate not then being in session, President Wilson made an *ad interim* appointment, but the next session of the Senate expired on March 4, 1921, without any appointment having been made of a successor by and with the advice and consent of the Senate. Myers, the Postmaster, had as counsel Hon. Will R. King, a former judge of the highest court in Oregon and suit was brought in the Court of Claims in Washington, D. C., to recover the salary attached to the office of postmaster for the balance of the term of four years. This necessarily raised the issue as to whether the President had the power to remove him.

The Court of Claims, after expressing in the form of *dicta* its opinion that the statute was unconstitutional, refused to base its judgment on that point, and gave judgment against Myers on the trivial ground, which could not be sustained, that he had delayed in bringing suit for such a period, that even if he had a good claim, he was barred by *laches* from recovering judgment. Thereupon Judge King appealed the case to the Supreme Court of the United States.

Recognizing the exceptional importance of the issue, the Supreme Court requested Senator Pepper to appear as *amicus curiae* on behalf of the legislative authority of Congress to control the Chief Executive in his power of removal. The reargument took place on April 13 and 14, 1925, when Judge King made the opening argument for the Postmaster and Senator Pepper submitted a masterly brief and an eloquent oral argument in support of the constitutionality of the statute, basing his argument largely on the arguments of the minority in the first Congress and the later arguments of Webster, Clay, and Calhoun.

It may be said in passing that this is one of the very few, if not the only case, in which a Solicitor General, whose office was created by statute, has ever argued in the Supreme Court of the United States the unconstitutionality of a federal statute. The case was one of fundamental importance, for it involved the equilibrium of power be-

tween the Legislative and Executive branches of the federal government.

On October 25, 1926, the Court rendered its decision. Chief Justice Taft unfolded a large manuscript and read the majority opinion of the Court sustaining the position that Congress could not impose any restrictions on the Executive's power of removal.\*

The great controversy had been settled and the men, who had fearlessly upheld during 136 years that power even in the face of condemnatory resolution, impeachment and political oblivion, were finally vindicated. Had it not been for them, the issue might never have been settled in favor of the Chief Executive.

This notable decision does not necessarily confirm the right of the Chief Executive to remove officers, whose duties are not of an executive or administrative character, but rather legislative in character. As Congress may not control the executive power, so the Chief Executive may not invade the powers of Congress. The Myers decision is not inconsistent with the theory that the Congress, in appropriating public money, has the right to see that the money is used for the purposes for which appropriated. This it may do directly through its own committees or through its own official, responsible directly to Congress. This may also be true in respect to the Interstate Commerce Commission, which exercises the delegated legislative duty of fixing railroad rates and regulating interstate carriers in certain respects. This question has never reached the Supreme Court of the United States, though the legislative power over similar state officers has been upheld by the Supreme Court of Pennsylvania under somewhat similar constitutional and statutory provisions.

The Chief Executives have exercised the power of removal of administrative officers, without effective legislative interference since 1789, except in the instances men-

\* *Myers v. United States*, 272 U. S. 52, 295. It is an irony of history that a lawyer of the same political faith of President Wilson represented Myers and that powerful dissenting opinions were rendered by Associate Justices McReynolds and Brandeis, who had been appointed by Mr. Wilson to that Court. This has frequently been the case in the history of the Supreme Court and attests its noble integrity of purpose.

tioned, and in succeeding chapters it will be shown how bureaucracy has thus grown and prospered like the green bay tree.

Only secondary to this question of the power of removal, in its relation to the subsequent development of a federal bureaucracy, was another question, which arose in Congress at the time when the Departments were created.

In establishing the Treasury Department, the law provided that it was the duty of the Secretary "to digest and report plans for the improvement and management of the revenue, and for the support of the public credit." This involved the question of the power of the President's Department heads, now collectively called the Cabinet, to advise Congress as to its policies. Mr. Page moved to strike out these words, on the ground that the asserted power of the Secretary of the Treasury to report plans "for the improvement and management of the revenues" would be a dangerous invasion of the constitutional privilege of Congress. He suggested that the members of Congress, instead of using their own judgment, would ordinarily support the recommendations of the Executive, and he predicted that this would lead to the admission of the ministers of the government to the floor of Congress.

Mr. Tucker supported his view, and suggested that as the Constitution requires all revenue bills to originate in the House of Representatives, they would not thus originate, if previously recommended by ministers of finance.

That irrepressible and ultra-democrat, Elbridge Gerry, supported the view, and expressed the opinion that Congress was already attaching too much importance to executive officers, and added:

"If the doctrine of having prime, and great ministers of state was once well established, he did not doubt but he should see them distinguished by a green or red ribbon, insignia of court favour and patronage."

Thus early did Congress manifest a jealousy of the Executive in return for the excessive fear, which the

Executive always feels for the possible vagaries of Congress. Fortunately for the spirit of co-operation, which ought to prevail between the two Departments of government, and which generally has prevailed, a majority of the House refused to take this extreme view of the independence of the two branches of government. That always sane thinker, Mr. Madison, forcefully showed that the most important service of a cabinet officer would be to break the ground for Congress, by studying the facts of any problem and reporting conclusions to Congress for its approval or disapproval.

One of the Representatives sagely said:

“Certainly we carry our dignity to the extreme when we refuse to receive information from any but ourselves.”

The future was to verify this observation, for if the Congress of today could not and did not get its primary information from the Executive, there would be even worse chaos than at present prevails in the councils of the nation. As Mr. Madison said in the debate in question:

“There is a small probability, although it is but small, that an officer may derive weight from this circumstance, and have some degree of influence upon the deliberations of the Legislature. But compare the danger likely to result from this cause with the danger and inconvenience of not having well informed and digested plans, and we shall find infinitely more to apprehend from the latter.”

Thus the amendment was rejected, and notwithstanding the fanciful Montesquieu doctrine that the three departments of Government could be shut up in water-tight compartments, the new government began to work with a clear recognition that the three great departments of Government were not independent, but, in a very practical sense, interdependent.

## CHAPTER VI

### THE MUSHROOM GROWTH OF BUREAUCRACY

“How doth the little crocodile  
Improve his shining tail,  
And pour the waters of the Nile  
On every golden scale!

“How cheerfully he seems to grin,  
How neatly spreads his claws,  
And welcomes little fishes in  
With gently smiling jaws!”

—ALICE IN WONDERLAND.

BUREAUCRACY within bounds, both in number of members and in control by law, is essential in any form of government. We live in an age of specialized work. There is no necessary evil implication in the word “bureau.” They are obviously essential to enable the government to function within the limits of its constitutional powers. Our nation has assuredly not underestimated this necessity. The tax-payers are directly or indirectly supporting at least ten million people in the government, federal, state and municipal, or one twelfth of the population of the country, and as many of them exercise large discretionary powers, bureaucracy has become a real menace to the welfare of the nation. Many of the federal bureaus have no justification in any grant of power and are fast making the Constitution a mere rhapsody of words.

Thomas Jefferson on reaching New York City, then the seat of government, to accept his appointment as our first Secretary of State, found that in the act of September 11, 1789, 1 Stat. 67, 68, Congress had provided:

“That there shall be allowed to the officers hereinafter mentioned, the following annual salaries, payable quarterly at the Treasury of the United States: to the Secretary of the Treasury, three thousand five hundred dollars; to the Secretary in the Department of War, three thousand dollars; (b) to the Comptroller of the

Treasury, two thousand dollars; to the Auditor, fifteen hundred dollars; to the Treasurer, two thousand dollars; (c) to the Register, twelve hundred fifty dollars; to the Governor of the Western Territory, for his salary, as such, and for discharging the duties of Superintendent of Indian Affairs in the northern department, two thousand dollars; to the three judges of the western territory, each, eight hundred dollars; to the Assistant of the Secretary of the Treasury, fifteen hundred dollars; to the Chief Clerk in the Department of War, six hundred dollars; to the Secretary of the western territory, seven hundred and fifty dollars; to the principal clerk of the Comptroller, eight hundred dollars; to the principal clerk of the Auditor, six hundred dollars; to the principal clerk of the Treasurer, six hundred dollars.

*“Section 2. And be it further enacted, That the heads of the three departments first above mentioned shall appoint such clerks therein respectively as they shall find necessary, and the salary of said clerks respectively shall not exceed the rate of five hundred dollars per annum.”*

These and similar statutes, fixing salaries, were followed by the appropriation act of September 29, 1789, 1 Stat. 95, which provided:

“That there be appropriated for the service of the present year, to be paid out of the requisitions heretofore made upon the several states, or from the duties on imports and tonnage, the following sums, *viz*: A sum not exceeding two hundred and sixteen thousand dollars for defraying the expenses of the civil list under the late and present government; a sum not exceeding one hundred and thirty-seven thousand dollars for defraying the expenses of the department of war; a sum not exceeding one hundred and

ninety thousand dollars for discharging the warrants issued by the late board of treasury, and remaining unsatisfied; and a sum not exceeding ninety-six thousand dollars for paying the pensions to invalids."

These statutes of the First Congress, fixing the salaries of the officers and employees of the United States and making appropriations to pay such salaries, have been referred to at length as an illustration of the simplicity of the times.

Jefferson found two clerks of equal rank in the Department of Foreign Affairs—one in charge of the papers of that department and the other having custody of the great seal, legislative records and other papers not connected with foreign affairs, finance or war. Jefferson decided to retain the services of both clerks in equal rank in the State Department, but it required the special act of June 4, 1790, to permit him to do so. The appropriation act of December 23, 1791, 1 Stat. 226, allowed him but \$6,300 for his salary and that of his clerks. When the Government was removed in 1800 from New York to Philadelphia, there were but 64 departmental clerks in the new government. At the close of business on June 30, 1930, the State Department had 4,691 civil service employees alone, and its total expenditures were many times greater than the cost of the entire government during the early years.

The Secretary of War was allowed in this Act of December 23, 1791, the sum of \$9,600 for his salary, and the salaries of the clerks and employees of the War Department; as his own salary had been fixed at \$3,000 and that of his chief clerk at \$600, there remained a balance of \$6,000 with which to employ twelve clerks at the maximum rate of \$500 a year.

The Secretary of War admits in his annual report for the fiscal year 1931 that the total salaries paid in his office alone were \$296,516.17. This does not include the expenditures for salaries for any part of the War Department except for the Secretary's office. The Annual Re-

port of the Civil Service Commission shows that the number of civilian employees in the War Department has grown from about 13 in 1790 to 50,289 in the fiscal year ending June 30, 1930.

Consider the birth, growth—but never the death—of a federal bureau by an imaginary illustration. To select a fictitious example is difficult, for the one hundred and fifty bureaus now existing almost cover the life of man from his cradle to the grave. Happily the final exit of the citizen from this mortal life gives the author his illustration for—as far as we know—there is as yet no morticians' bureau in any Federal department. How this escaped the attention of the Bureaucracy is a mystery. It seems so obvious that if the Federal government must supervise the manner of birth, the conduct of life and the maintenance of health, it should also give its paternal care to the final exit of the over-governed citizen. Only the hint is necessary, and should this book attract any attention in the exalted heights of bureaucracy, a morticians' bureau may soon be flourishing, presumably in the mushroom-grown Department of Agriculture.

The bureau will begin its mortuary activities in this fashion:

Some ambitious, but none too busy mortician, will feel that his ancient and honorable profession has been neglected. Perhaps he will have aided some Congressman or Senator in the final rites of a relative and gained his good will by his professional sympathy. He will suggest to the Congressman or Senator the inexcusable omission of the Federal Government to guide the citizen in his final exit to the grave. The Congressman—possibly a member of the all powerful Committee on Appropriations—will insert a modest item in the next Deficiency Bill for an appropriation of \$25,000 to study the subject of sanitary interments. While the ordinary rule of the Government is to appoint to the head of each department and bureau some one, who knows little or nothing of its work, yet gratitude for the opportunity to create a new bureau will secure for the mortician the appointment.

The bureau begins by the mortician—now called United

States Chief Mortician—appointing a first and second assistant Chief Morticians and a secretary for each of these exalted functionaries, and at least three stenographers and a messenger.

The problem now is to justify the creation of the Bureau. This requires considerable ingenuity. A scientist is selected to study the process of putrefaction and a half dozen historians are dispatched to foreign lands to make a study of Egyptian embalming, the Etruscan methods of burial and the Roman methods of cremation. The possibility of such mortuary inquiries gradually widens and soon a series of monographs are issued by the Public Printer, and find their grave in the office of the Superintendent of Documents. Then a scientist is employed to study the kinds of wood that may be used in the construction of coffins, and the best stone for use in cemeteries.

Fearful that the States are incompetent to control the methods of burial, the Bureau, now costing \$200,000 a year, procures federal aid subsidies, whereby each State receives a grant of money, if it will match it in amount, and subject its domestic laws to the Federal Mortuary Bureau.

Then the Chief Mortician—swollen with the pride of office—employs the radio for a twenty-minute nationwide broadcast, in which after some orchestral music and a song of some famous "crooner"—may their tribe perish from the face of the Earth!—the Chief Mortician in the dulcet tones of the best "Bed Time Story Teller" implores the people of the United States to enlist in the great crusade, whose slogan is:

"More and better funerals,"  
"If eventually, why not now?"

Each year the appropriations grow and each year the activities of the Bureau expand. The Children's Bureau, watching the entrance of life, grows jealous at the expansion of a Bureau, which concerns itself with life's exit, and a desperate counter activity is waged by the Chil-

dren's Bureau to convince Congress and the people that the entrance into life is more important than the exit.

All this seems both fanciful and ridiculous, but it is a faithful picture of the genesis and growth of many federal bureaus, whose great mission and constant activity is to make business for themselves, secure larger appropriations, and persuade by printed pages and radio "ballyhoo," an overtaxed people that the expense is justified. These Bureaus never die. Like the dying Cleopatra, they have "immortal longings."

Remarkable as is the genius of a federal bureau for immortality, it is as nothing to its fecundity. A bureau may have a small beginning, but it is like the modest shad—it has within it roe from which an indefinite progeny can be spawned. Thus, the Department of Agriculture began in 1839 with an appropriation of \$1,000, to collect agricultural statistics. In less than a century it has expended over a billion dollars and multiplied its bureaus a hundred-fold, until in 1932 an appropriation of \$247,283,130 was necessary to enable this department to be, as the *Chicago Tribune* aptly said, "lost in its own weeds."

A few of its bureaus can find some remote sanction in the Constitution, for the interstate transportation of cattle may well justify a federal quarantine, but nearly all their functions relate to agriculture, and the Constitution never gave the federal government any power over agriculture, as such. It is a bald and palpable usurpation of the function of the States, maintained for the benefit of one class and largely at the expense of the taxpayers of the industrial States, who have no practical interest in agriculture.

A recent writer\* has well illustrated this remarkable fecundity by a witty biological analogy:

By analogy, the bureau is, in the realm of government, what protozoa are in the realm of zoology. Originating as a single cell they immediately begin to reproduce by fission, a self-division of the body into two or more complete cells. The protozoa abound in stagnant waters, as the

\* *Federal Octopus*, by Sterling E. Edmunds of the St. Louis Bar.

bureau can flourish only in the stagnation of public spirit. Protozoa are parasites and the cause of certain diseases, as bureaus are parasitic and destructive of the vigor and health of the body politic. Again protozoa are the simplest and lowest form of animal life, as bureau-government is one of the earliest and crudest forms of arbitrary rule. Protozoa are apparently content to remain protozoa, but there the analogy ends; the bureau is ever striving onward and upward, and not only subdivides itself indefinitely, but each subdivision, in turn, seeks to elevate itself ultimately into a mighty department.

To show that Mr. Edmunds' biological analogy is not an exaggerated one, it is only necessary to name a few of the bureaus, which have developed at the expense of the taxpayer in the Bureau of Agriculture:

Cattle tuberculosis service .....	\$ 6,505,800
Cattle tick service .....	771,900
Animal husbandry investigations .....	723,400
Diseases of animals .....	460,000
Hog cholera service .....	499,480
Dourine treatments to horses .....	32,800
Dairy Experiments .....	727,410
Fungus investigations .....	59,960
Citrus diseases .....	40,000
Forest pathology .....	236,904
Blister rust investigation .....	456,000
Plant-nutrition investigation .....	18,050
Cotton diseases and production .....	233,140
Rubber investigation .....	140,463
Drug plant inquiry .....	58,120
Study of worms .....	58,260
Seed investigations .....	78,220
Cereal crop diseases .....	574,060
Barberry investigation .....	377,140
Tobacco investigation .....	91,000
Sugar plant investigation .....	413,700
Botany .....	56,260
Dry-land agriculture .....	345,740
Irrigation agriculture .....	153,940
Horticultural diseases .....	1,420,360
Phony peach eradication .....	85,000
Gardens and grounds .....	98,120
Genetics and biophysics .....	36,420
Forest products Laboratory building .....	800,000
Forest products study .....	641,300
Forest survey .....	200,000
Forest economics .....	75,000

## THE MUSHROOM GROWTH OF BUREAUCRACY 71

Acquisition of lands for protection of watersheds of navigable streams	2,000,000
Agricultural chemical investigations	501,075
Color investigations	93,460
Insecticide investigations	128,400
Plant dust explosions	36,500
Fertilizer investigations	370,835
Soil investigations	61,420
Soil microbiology	43,820
Soil fertility investigation	220,080
Fruit and shade tree insects	549,190
Truck garden insects	451,690
Forest insects	224,290
Cereal insects	567,220
Grasshopper extermination	1,450,000
Cotton insects	298,820
Insects affecting man	156,900
Household insects	154,920
Classification of insects	238,730
Bee culture	73,920
Rabbit experiment station	12,640
Food habits of birds study	107,660
Biological investigations	128,315
Farm management study	480,760
Home economics investigation	218,700
Pink boll worm control	497,000
Parlatoria date scale	61,460
Thurberia weevil control	34,500
Gypsy moth control	648,580
Corn borer control	950,000
Japanese beetle control	445,000
White pine blister rust	10,200
Phony peach control	12,000
Mexican fruit worm	124,960
Mediterranean fruit fly	30,300
Enforcement Insecticide act	225,458
Livestock production experiments	43,500
Soil erosion investigations	330,000
Forest roads and trails	12,500,000

If we eliminate constitutional scruples as to these unconstitutional bureaus, and seek to justify them because of some pragmatic advantage, yet such advantage cannot be urged for that greatest legislative folly, when Congress, acting under the invincible pressure of the Farm Lobby, appropriated five hundred millions of dollars to the Farm Board in aid of agriculture, of which over three hundred millions were spent in a gigantic and fruitless gamble to raise the price of wheat and cotton.

That the American people have been both silent and patient under this gross perversion of federal power suggests the possibility that the present generation of Americans are unworthy of the priceless heritage of their

Constitution. It illustrates the truth of Lecky that an unrestrained democracy creates a condition "in which one class imposes upon another burdens which it is not asked to share, and impels the State into vast schemes of extravagance under the belief that the whole cost will be thrown upon others."

Of course this folly is but one of the unceasing repetitions of history. What is true of the American Republic today was not only true of Rome, but explains its downfall. As Samuel Dill says in his volume, *Roman Society in the Last Century of the Western Empire*:

"The system of bureaucratic despotism, elaborated finally under Diocletian and Constantine, produced a tragedy in the truest sense, such as history has seldom exhibited; in which, by an inexorable fate, the claims of fanciful omnipotence ended in a humiliating paralysis of administration; in which determined effort to remedy social evils only aggravated them until they became unendurable; in which the best intentions of the central power, were, generation after generation, mocked and defeated by irresistible laws of human nature and by hopeless perfidy and corruption in the servants of government."

If we may believe Plutarch, there was even in the nobler days of the Roman Republic sufficient leadership to abate the evils of bureaucracy, for Plutarch, in his life of the younger Cato, says:

"So he no sooner came to his office, but he presently made great alteration amongst the clerks and officers of the treasury, who, having the laws and records in their hands, and exercising the office commonly under young men which were chosen treasurers (who for their ignorance and lack of experience stood rather in need of ministers to teach them than that they were able to correct others), they themselves were the offi-

cers and controlled them. But Cato, not contenting himself with the name and honour of the thing, did thoroughly understand what the clerks and registers should be, and therefore would have them to be as they ought to be, ministers under the Quaestor only. . . . Thus, having pulled down the pride and stomach of these clerks, and brought them into reason, in short time he had all the tables and records at his commandment, and made the treasure-chamber as honourable as the Senate itself."

It is natural that the present complex age should differ from the simple days of 1789, but it seems indisputable that the expenses of the Federal Government have increased far beyond the actual benefits conferred by that government on the people of this country. Congress is primarily responsible for the growth of bureaucracy in numbers, powers and cost beyond the needs of the United States of today, but the motive force has been the incessant activity of the bureaucracy or groups of citizens having selfish motives, or both, as in the imaginary establishment of the Morticians' Bureau. With proper reorganization of the departments and abolition of all useless and extra-constitutional bureaus, the present number of civilian employees could be gradually and substantially reduced by the President's refusal to fill vacancies, due to deaths, retirements, and resignations. The present number, estimated by the Civil Service Commission in its Annual Report for the fiscal year 1931, at 608,915 does not include all the civilian employees.

The recommendations of heads of departments, who know little or nothing about the actual need for the establishment of new services or enlarged powers for old services, aided by the favorable reports of committees of the Senate and House, who know even less about such needs, have led to the present saturnalia of inefficiency and extravagance beyond precedent in our history. It is a crime that our government should drain from the productive wealth of the Nation over four billion dollars each year.

The Federal Government appropriated in 1800 approximately \$11,000,000 or roughly \$2 per person for the expenses of the Government; in 1850, the appropriations were approximately \$45,000,000, or about \$1.93 per person; and in 1930, the appropriations were \$4,710,377,376, which approximated \$38.42 for every man, woman and child according to the 1930 census return.

President Hoover in his Annual Message of December 3, 1929, in recommending reorganization of the executive departments, said that committees had repeatedly examined the question and that their conclusions had been unanimous that reorganization was necessary to "sound administration; of economy; of more effective governmental policies; and of relief to the citizen from unnecessary harassment in his relations with a multitude of scattered governmental agencies."

The following table illustrates the alarming increase in expense.

DEPARTMENT OF AGRICULTURE

	1911	1931
General administration .....	\$3,554,778.73	\$ 2,631,394.85
Experiment stations .....	1,572,455.10	4,733,590.14
Extension service .....	2,250,000.00	10,360,578.69
Weather Bureau .....	1,354,589.92	3,987,460.56
Bureau of Animal Industry .....	3,728,146.19	15,478,005.79
Bureau of Dairy Industry .....		771,845.08
Bureau of Plant Industry .....	1,110,980.43	5,433,500.36
Forest Service .....	6,157,854.92	25,527,165.08
Bureau of Chemistry and Soils .....		1,825,004.58
Bureau of Entomology .....		2,662,348.09
Bureau of Biological Survey .....		1,956,514.96
Bureau of Public Roads .....		588,831.03
Bureau of Agricultural Economics .....		6,188,832.96
Bureau of Home Economics .....		209,024.57
Plant Quarantine and Control .....		5,197,003.22
Enforcement of grain futures act .....		165,765.49
Food, drug and insecticide administration .....		1,614,666.10
Experiments in dairying, etc. .....		45,240.36
Farmers' seed grain loans, etc. .....		82,371.35
Forest roads, trails and highways .....		11,715,725.11
Co-operative construction of rural post roads .....		155,913,895.72
Flood relief and Porto Rico hurricane relief .....		2,409,043.89
Mt. Vernon Highway .....		3,392,958.62
Advances and loans to farmers .....		48,742,387.76
Miscellaneous items .....	187,422.97	252,962.59
Total after adjustment between cash expenditures and checks issued .....	\$19,916,228.26	\$296,865,944.69

This rapid growth of bureaucracy is not overstated. It will be seen in an appendix (post. p. 256), showing the income, expenditures, and public debt for the federal government from 1791 to 1930 and the following comparative statement between the appropriations for the Department of Agriculture for the fiscal years 1911 and 1931, illustrates the growth of expenditures in only one Department.

As shown by this tabulation, there are in the Department of Agriculture various bureaus, including a Bureau of Home Economics. The appropriations for that bureau grew from \$109,963 for the fiscal year 1928, to \$247,380, or more than double, for the fiscal year 1932. Another bureau in that Department began in an act of 1887, which appropriated \$10,000 for studying "the composition and digestibility of different kinds of foods for domestic animals," and has now grown into a Bureau of Animal Industry, whose appropriations for 1932 aggregated \$23,-437,933.03.

Through the Bureau of Home Economics "Aunty," not Uncle Sam, exercises a vicarious and expensive motherhood. As an example of its mischievous futility, it issued over 160 pamphlets to tell the American citizen how to live. For example Bulletin No. 52 has a front page, describing suits for the small boy, wherein it is stated that:

"The trousers worn by the little boy in the picture can be buttoned to an underwaist, as shown, with a matching or contrasting loose blouse over it. Or, when the weather becomes warm and the days invitingly sunshiny, the underwaist may be replaced by an open mesh sun-suit top of cable net."

While such a statement reads like the advertising copy of some department store, we are advised that it was done at the expense of the American taxpayers by the further statement in the same leaflet that:

"These trousers were designed by the Bureau of Home Economics of the U. S. Department of

Agriculture for the very small child who is just learning to dress himself. It is suggested that, until a child has become thoroughly familiar with the intricacies of buttons and buttonholes, all his trousers be made from the same pattern, with fastenings in the same place."

Surely it requires no ghost of a federal bureau come from its cavernous grave in the Department of Agriculture to give the American mother that information. Is it possible that the American boy cannot button his trousers without government aid?

Is it possible that such an institution is maintained at a public expense of over \$200,000 a year by the same Government, whose President (Monroe) a century ago vetoed an internal improvement bill on the ground that it was unconstitutional?

Because the range of motherly projects did not seem to be appreciated by a nation of mothers, who knew well how to make trousers for small children and could buy patterns for such trousers, or even the trousers themselves from department stores, the Bureau of Home Economics inaugurated several years ago a series of "fillers" for free distribution to Sunday newspapers. The desk in the National Press Club in Washington is daily furnished with articles, of a few paragraphs or many pages, which have been written by employees on the public payroll, typed by stenographers on the same payroll with typewriters purchased at public expense, mimeographed at public expense, and placed on the desks by messengers in the employ of the United States, in order that such departments and establishments of the Government may obtain publicity in the press and thus justify their existence.

One of these "fillers" described the "simple, straight-leg trouser" in a five hundred word press release. A companion article about the same time, "Setting in a Sleeve," was accompanied by a two column cut—also made at public expense—carrying a descriptive line, "The illustration, made by the Bureau of Home Economics, shows how a set-in sleeve is basted into the Armseye." During the years

1923 to 1929, this Bureau released to the press of the country, over a thousand items similar to those just described, the high tide being reached in 1928, when an average of more than one a day was sent out to the newspapers, whose editors generally tossed the publicity material into the handy waste baskets. In Dana's time the omnivorous "cat" in the old *Sun* office would have had its digestion sorely taxed by such governmental drivel. Not being able to reach the American mothers through the press, some of these bureaus have taken to the air, in the form of radio releases, and the only justification may be that such humiliating nonsense is less disgusting than the nightly admonition to use toothpastes and antiseptic mouth washes. The Bureau of Home Economics cost the overburdened taxpayer \$247,380 the last fiscal year.

It not only discusses clothes for the small boy, and the setting of sleeves in armseys, but devotes considerable attention to determining the water, protein, fat, ash, carbohydrates, etc., of many articles of food. The udo is one of such vegetable foods, which the Bureau carefully analyzed and the udo does not appear in the 1931 seed catalogue of one of the nation's largest seed houses. It is safe to say that few persons in the United States, or in the world, are greatly concerned whether the udo is a plant or an animal, but the Bureau has expended thousands of dollars attempting to sell the udo to the American people as an article of diet.

When Congress yielded to the greedy proponents of the act of 1887, and added \$10,000 to investigate the composition and digestibility of different kinds of foods for domestic animals, it was easy to persuade it the next year to appropriate an additional \$10,000 for research in human nutrition, and thus we have today the Bureau of Home Economics, which costs the American taxpayers approximately a quarter of a million dollars annually to disseminate information about the udo, garments for small boys, setting of sleeves in armseys of garments, with sets of 47 lantern slides on "First Aid in Window Curtaining" and 52 slides on "What Shall I Wear!"

Notwithstanding the ever growing deficit, the Bureaus

continue to secure larger appropriations from Congress for more and more so-called research.

As a second illustration, we have the Children's Bureau. A neighborhood settlement-house manager in 1906 sponsored the idea of a Children's Bureau, and the proponents of the measure had the office of the Senator, who introduced the measure, under a state of siege, until he yielded to their importunity. President Roosevelt in 1909, after a similar siege, endorsed the idea incidentally in his annual message to Congress and in 1912 the bill became a law with a modest appropriation of \$25,640. By 1932 this annual appropriation had grown to the sum of \$399,400, with the Bureau attached to the newly established Department of Labor! This bureau secured appropriations for a few years to co-operate with the States in teaching prospective mothers how to bear and rear children. Senator James A. Reed's speech in the Senate, condemning this bill, is a masterpiece of sarcasm, as well as sound reasoning, and will be referred to more at length in a subsequent chapter dealing with federal subsidies to the States.

The rise of the Women's Bureau of the same department was equally spectacular. It began in 1918 with an appropriation of \$40,000 as an alleged emergency measure to assist in placing women in industry. By an act of June, 1920, it was made permanent with an appropriation of \$41,200, increased the next year to \$75,000, and the appropriation for 1931 was \$180,500.

Another recent instance is that of the Department of Commerce and Labor, created by the act of February 14, 1903, 32 Stat. 825, with a secretary at its head to perform certain other additional paternal work and to take charge of certain bureaus of other departments transferred, or authorized to be transferred, to the new department. This act was amended by the act of March 4, 1931, 37 Stat. 736, by transferring the labor and immigration activities to a new Department of Labor. The mushroom growth of the bureaucratic activities of the Department of Commerce has been so astounding that Congress appropriated \$17,500,000 to construct for it an office building, containing 3,311 rooms, occupying a land area of nearly eight

acres and seven stories high, with a total floor area of 1,605,066 square feet. A tabulated statement of the expenses of this department for the fiscal years 1914, 1921, and 1932, is as follows:

## DEPARTMENT OF COMMERCE

	1914	1921	1932
Salaries, Office of the Secretary . . . . .	151,800.00	196,050.00	467,847.29
Contingent expenses . . . . .	35,602.22	50,007.55	340,759.45
Printing and binding . . . . .			760,000.00
Rent, District of Columbia . . . . .	50,000.00	68,500.00	
Bureau of Corporations . . . . .	253,300.00	Became Tariff Commission	
Census Bureau . . . . .	1,122,820.00	7,550,000.00	6,270,581.75
Bureau of Foreign & Domestic Commerce . . . . .	174,860.00	916,539.27	5,349,891.01
Steamboat Inspection Service . . . . .	534,740.00	1,020,394.39	1,395,385.00
Bureau of Navigation . . . . .	160,510.00	315,160.19	498,120.00
Bureau of Standards . . . . .	627,533.12	1,306,262.47	3,036,870.00
Coast and Geodetic Survey . . . . .	1,037,737.80	2,316,960.07	3,078,985.53
Lighthouse Service . . . . .	5,073,208.49	8,878,808.70	12,162,811.24
Bureau of Fisheries . . . . .	1,087,190.81	1,288,828.13	2,914,369.57
Miscellaneous . . . . .	8,556.00		
Payment of claims . . . . .	8,750.00	1,883.65	1,571.94
Refund of fees . . . . .	3,000.00	3,000.00	3,000.00
Employment Stabilization Board (newly created) . . . . .			90,000.00
Radio Division (newly created) . . . . .			649,540.00
Aircraft in Commerce (newly created) . . . . .			10,372,555.64
Patent Office <sup>1</sup> . . . . .			5,272,950.00
Bureau of Mines <sup>2</sup> . . . . .			2,294,348.25
	<hr/>	<hr/>	<hr/>
	\$10,329,608.44	\$23,912,394.42	\$54,959,586.67

<sup>1</sup> Expense of Patent Office in Interior Department, fiscal year 1925, before transfer to Commerce . . . . . \$2,812,789.11

<sup>2</sup> Expenses of Bureau of Mines in Interior Department, fiscal year 1925, before transfer to Commerce . . . . . \$1,900,821.27

Included in the sum of \$5,349,891.01 appropriated for the Bureau of Foreign and Domestic Commerce for 1932 are items of \$909,400 for the promotion of commerce in Europe; \$528,700 for a like purpose in Latin America; \$420,260 for the Far West; \$105,940 for Africa; \$30,800 for enforcement of the China Trade Act; \$736,280 for maintenance of district office service in the United States; \$1,013,131 for investigation and report on domestic sales and foreign problems relating to commerce; \$78,200 for preparation of a list of foreign buyers; and \$62,599 for investigation of foreign trade restrictions.

The Secretary of Commerce reports that the Department of Commerce has 73 "commissioned personnel in the European offices of the Commerce Department." These men are classed as commercial attachés, assistant commercial attachés, trade commissioners and assistant trade commissioners. To some extent they duplicate the consular service of the State Department. The Department of Commerce has biographical sketches of these officials, some of which are apparently autobiographical and not wanting in self-appreciation, and yet an examination shows that only 24 of the 73, or approximately one-third, have had much, if any, experience in commercial work before entering the Government service. Among the 24, who had had some experience, is one who was chief of files and stenographic section in the War Department; another was a newspaper reporter; one "assisted his father—engineer—abroad"; another served in various capacities with the Y. M. C. A. in Europe; one was a passenger agent and steamboiler liability claim investigator; another was an instructor in languages; one was the general manager of hotels and restaurants for two years; another "was in the consular service" and served with the U. S. Graves Registration Service in France and was a technical assistant in the United States Navy; one organized a trucking company, while finishing a course at a university; still another was a newspaper reporter; one had nine years' experience as an apprentice and clerk; another was a Red Cross dietitian.

No examination has been made of the biographies of the Department of Commerce employees, stationed in Asia, Africa, Latin America, or Australia. The foregoing relates solely to the personnel in Europe, and it is doubtful whether more than six of the 24, who claimed any business experience, had had business experience sufficient to qualify them for promoting commerce or in securing adequate data with respect to the problems relating to the production, distribution and marketing of export industries or investigating foreign trade restrictions.

Should the American taxpayers be saddled with the tremendous expense of maintaining throughout the world

men and women to promote commerce, who have had little or no experience in the promotion of foreign trade?

Our consular representatives are not overworked and it is difficult to see why their services should be thus duplicated, merely to aggrandize the swollen and overdeveloped Department of Commerce.

It has often been claimed in statements of Department of Commerce employees that the growth of our foreign trade was due to its representatives. This may be partly true—but at what cost?

Senator Vandenberg, of Michigan, recently reminded the Senate that in some important capitals of the world, at least seven of the ten Departments have representatives. He cited, as illustrations, the costly duplication of our government representatives, at Copenhagen, Vienna, Mexico City and Buenos Aires. In the latter capital the State Department is represented by an Embassy, which costs \$78,943 and a General Consulate, which costs \$81,200. The Commerce Department has an office, which costs \$71,496; the Agricultural Department one, which costs \$16,875; the War Department one, that costs \$6,934; and the Navy Department one, that costs \$13,725. Thus, our government has, at Buenos Aires, 69 employees, at a total cost of \$269,173, and this is exclusive of other expenses, such as transportation, and the purchase of an Embassy building costing several millions.

The total appropriations for this Department of Commerce in 1931 aggregated \$54,959,586.67. The Civil Service Commission reported that in 1930 this department had 26,955 employees under the Civil Service, to which must be added many positions not under the Civil Service laws, many of which are filled as the result of political influence.

Contrast with the activities referred to in this chapter, the Bureau of Standards, whose present staff is composed of approximately 800 scientists and about 65 research technicians, detailed to the Bureau by private interests. This Bureau does not make public the results of its tests

of commercial products, though such results are made known to industry.\*

These illustrations, which could be duplicated in many of the departments of the Government, have been cited, not in a spirit of criticism of the men and women in charge of the activities, but as indicating the bureaucratic expansion of the Federal government since 1789—which has been aided and abetted by certain business and social groups in the United States. The octopus of federal bureaucracy has developed either because Congress did not realize the futility of many of the invasions of private life or had not the courage and conviction to withstand the demands until the better judgment of the American people condemned the proposed extension—as it has condemned the proposed Child Labor amendment to the Constitution. Had the matured judgment of the American people not condemned this amendment, there would have

\* It has been pertinently stated by Chase and Schlink in *Your Money's Worth*, pages 203 to 205, that:

"Why does a service run by taxpayers' money refuse information covering competitive products—to that same taxpayer? The answer is obvious but not altogether convincing. It is argued that the general release of test results covering competitive products by name of maker will promote commercial injustice. K's oil may never have been submitted for test. A's oil, which made a high rank, has changed its process and is now inferior. This point is well taken, of course, but is it important enough to freeze out the common citizen to eternity? Release would make a disturbance—here and there—granted. Some injustice would be done—granted. But facts are facts, and the possibility of their misuse is something that always must be faced. Galileo had some facts that first and last, upset a good many people. Should they have been bottled up forever? That was the theory of the Best Minds of the day, but modern opinion holds differently. . . . Furthermore there is no reason why the citizens who pay for the Bureau and the other Government laboratories should not have the right to *initiate* a series of tests when the field is important and the known information either inadequate or non-existent. Manufacturers and promoters can now secure all the results of competitive tests (makers' names deleted); and they have initiated thousands of new tests which the Bureau has conducted often without cost to themselves. Has not the ultimate consumer an equal right?

With the Bureau's testing information freely available, a great lever would begin to operate on the manufacture of shoddy and shady goods, and on the selling of sound goods at exorbitant margins above their basic cost. And as a part of the process, the maker of good material who is willing to sell on a stable market at a reasonable margin, would not only have nothing to fear—he would fall heir to the business of the shoddy maker and the profiteer. It would require more temporary confusion and possible minor injustices than could conceivably arise, to offset the enormous benefits which would flow from a free release of the magnificent work now done by the Bureau of Standards.

The National Physical Laboratory is the British counterpart of the Bureau of Standards. Both conduct exhaustive tests on watches. American results are kept secret, but the British results are freely published."

been another great expansion of federal power in the intimate relations of parent and child. Child labor control, where such is necessary because of factory conditions, can be more properly and effectively regulated by the several states.\*

The United States employs 5,439 detectives of every type, from secret service operators to postal inspectors, for the apprehension and capture of federal law violators. 2,393 of this number, or 44% of the total, concentrate on prohibition. 343 operators under the Department of Justice are engaged in detecting law violators, against which the activities of that department are directed. Five hundred and forty are required to enforce the postal regulations, run down mail frauds, capture mail robbers, and in general make the mail so safe that it is a tradition with the criminal class that the postal inspector always arrests his man, no matter to what end of the earth he may flee. There are 1,129 immigration inspectors, 897 border patrolmen, and 137 secret service men.

In considering this and succeeding chapters, it should always be borne in mind that many of the activities of the Department of Agriculture, Commerce and Labor can find no possible sanction in any grant of power in the Constitution. Its great objective was to confine the federal government to strictly limited functions. The power to appropriate has proved the vulnerable Achilles' heel of our Constitution. It has made our government one of virtually unlimited powers. The Department of Agriculture began with an unconstitutional distribution of free seeds. It is now a colossus of arbitrary powers. Over its new grandiose palace should be written:

“Sacred to the memory of the Constitution of  
the United States.”

\* “Under one pretext and another there seems to be no right and no activity in our lives that government in these days is not looking for some excuse to regulate or suppress. The main concern of national government has become snooping. This is a rapidly growing nuisance, characteristic of bureaucracy, and intolerable. We have multiplied bureaus, whose ruling passion is interference with individual liberty and the increase of their powers. This is the universal nature of bureaucracy, and it is making a joke of the guaranties of civil liberty. Also, it is absorbing more and more of the public revenue and piling up a burden of taxation which is killing private enterprise and national prosperity.” *Chicago Daily Tribune*, December 24, 1931.

Congress is generally and, to some extent, justly charged with the responsibility for the orgy of expenditure of public funds. Let a member of the Senate or Congress oppose these organized minorities, who are the militant proponents of these costly and generally useless bureaus, and that member may, and frequently does, encounter the militant opposition of that minority in his next election.

But there is no organized group of taxpayers, who are prepared to steady the wavering hands of Senators and Representatives, who have the disposition and sometimes the courage to oppose these raids upon the Treasury. All members of the Senate or House of Representatives do not shiver as an aspen to every gust of wind. There are a few who believe in the conception of the true functions of our government as defined by the Founders of the Republic—equal rights to all and special favors to none—but they are in a minority and are unable to defeat pernicious and extravagant legislation. What we need is a healthy, general, and unselfish interest of our people in the problems of government. To secure this, they must be made "tax conscious." Too few of our people pay federal taxes. Less than 400,000 citizens paid in 1928 97% of the federal income tax. Why should the remaining 120,000,000 care?

Instead of fulminations that all legislators are politicians, intent on using public money to buy favors of their constituents or to pay tribute to such organizations as the Anti-Saloon League, the Farmers' Bloc, the Association of American Highway Officials, and other organized minorities, there should be carried to every citizen in the land the fact that unreasonable expenditures of public funds must be met by the taxpayer. He is not always the rich man, for the latter may, and frequently does, invest his funds in tax-exempt securities. The final incidence of taxation falls on the productive wealth of the nation. Taxes are shifted in large measure to the tenant and consumer. A nation can never lift itself economically by its own bootstraps and taxes may be so high that they reach the point of vanishing returns, for as the tax burden grows, the more

wealthy put their property into tax-exempt securities of both the Federal and State governments.\*

Unless the tide of increasing public expenditures begins to ebb, this Nation, originally dedicated to individualism, will increasingly become a socialistic state. Indeed, few States are more socialistic. This is recognized by the apostles of the socialistic order, and made a part of their program, either openly or in thinly disguised forms. Russia is not more bureaucratic than America.

The constantly growing strength of bureaucracy, the demands of groups for legislation and large appropriations, and the impotence of Congress to maintain its power are leading the American Government toward an absolutism, worthy of Moscow but unworthy of Philadelphia, where the Constitution was framed.

The subversive power secured by the bureaucrats and selfish groups from a well meaning and complacent Congress, which professes to accomplish so much for the poor, the exploited, and downtrodden, means nothing less than the transformation of individual enterprise, self-reliance, and ambition into collective or mass action, directed by a bureaucracy uncontrolled by law. Who can follow the history of the Federal Farm Board, the Inland Waterways Corporation, and many other activities of the Federal Government, which invade the field of business, and deny that we are thus headed?

The advocates of socialism affect to believe—and usually for selfish reasons—in the superman, whether of an individual leader or of a system, and so appeal particularly to the lower intelligence, which fears its own incapacity and sub-consciously favors a dictatorship. Has this not been the history of the great and vanished nations of the past and is it not the present condition of Europe? Have

\* Dr. Abbott stated a challenging fact in his book, *The New Barbarians*, that these mounting taxes are spent—

"Largely for the support of government employees and the maintenance of public institutions for the incapable and dangerous members of society, the feeble minded, the indigent and infirm, the criminals, the deficient, the deaf, the blind, the tubercular,—and the officials. So we have reversed the eighteenth century. Society now works at least a quarter of its time, not for the highest but for the lowest classes, and there is strong and continuous pressure, from the bureaucratic element in particular, to increase the paternalism of the government—and the offices. This is neither praise nor blame. It is a record of the fact."

the American people also created a Frankenstein of bureaucracy, from which escape is impossible?

Unless by some means not yet discovered we can enlist the militant interest of the people in the cause of efficient, honest, and economical government and thus eliminate from public life the time-servers, the end of the noble experiment of the Fathers of the Republic may be measured, not by centuries, but by decades. "Where there is no vision, the people perish."

## CHAPTER VII

### BUREAUCRACY AND ITS PROPAGANDA

Humpty Dumpty was sitting, with his legs crossed like a Turk, on the top of a high wall—such a narrow one that Alice quite wondered how he could keep his balance—and, as his eyes were steadily fixed in the opposite direction, and he didn't take the least notice of her, she thought he must be a stuffed figure, after all.—ALICE IN WONDERLAND.

WHEN the government was removed in 1800 from New York to Philadelphia, all the records were shipped in seven large and five small boxes, but in the year 1930 it required eight hours a day for 64 linotype machines to set the type for the printing required by one bureau of the Department of Commerce. The Public Printer reports that copies of each of the various annual issues of Government publications will fill 150 feet of shelf space.

Publicity has become a potent factor in the growth of bureaucracy. Congress is primarily at fault in permitting the establishment and growth of a huge and blatant bureaucracy, which loudly vaunts its usefulness from the housetops by newspaper articles, reports, radio broadcasting and bulletins. This voluminous printed matter numbered 8,360,570 copies for the Department of Commerce for the fiscal year 1930, and this number was increased to a total of 11,319,540 copies for the fiscal year 1931. The total cost of all printing for this department for the fiscal year 1931 was \$2,894,677.43. The Department of Agriculture topped the list for 1930 with 36,734,846 copies, an increase of 12,584,787 copies, and for 1931 its propaganda totaled 29,866,506 copies at a cost of \$1,080,021.83.

The cost of alterations made by the Department of Commerce aggregated \$267,733.72, and the cost for all alterations for all Departments in printed proofs of manuscripts was \$2,042,393.30 for the period 1921-1930.

The bulletins carry the names of the authors and the department or establishment, for whom these sapient Thebans speak, while the press releases never fail to mention some outstanding accomplishment of the department concerned. Not infrequently its administrative genius

has been in charge of the work for a few weeks or a few years—but rarely long enough to acquire the comprehensive knowledge, attributed to him by his subordinates, eager to secure his gratitude and recognition. To accomplish their ends they seize every opportunity, not only to promote the interests of their services but incidentally to suppress or explain away any news, which might react unfavorably on their bureau.

The stupendous cost of this publicity cannot be accurately determined either for the present or prior years. The Digest of Appropriations for the fiscal year 1932, states that an aggregate of \$10,243,991.20 was appropriated by Congress for the maintenance of the office of the Public Printer. This great sum takes no account of the army of employees and clerks on the payrolls of the United States, whose time, either in whole or in part, is devoted to the preparation of press releases, such as the study of the udo, fitting of sleeves into armseyes, or other miscellaneous information, made the subject of pamphlets, annual and special reports and releases. The report of the Wickersham Committee on Law Enforcement cost the American taxpayers a half million dollars. The cost of printing and binding this report was \$23,289.67 and while 300 sets were printed for sale at \$6.75 per set it is said that no set has yet been sold of this *magnum opus*. Possibly the public regarded it as light literature. Moreover the appropriation takes no account of the stationery, stenographers, mimeographing machines, ink, and other miscellaneous supplies devoted to this publicity work.\*

It is difficult to compare the appropriations made for the printing and binding of the several departments and establishments for the fiscal year 1932 with similar appropriations for prior fiscal years, due to the fact that no consistent procedure has been followed in making the appropriations. However, a few may be selected for comparative purposes to show the steady growth.

The appropriation for the printing and binding for the

\* A tabulated statement of the actual cost of the printing and binding, only, for the Government as given by the Public Printer and the number of copies printed for each department and establishment of the Government for the fiscal year 1931 is contained in the appendices to this book.

Department of Agriculture for the fiscal year 1914 was \$490,000, and it increased in 1932 to \$1,424,784. In addition to the bulletins, etc., heretofore mentioned, the Public Printer reported that the Bureau of Public Roads of the Department of Agriculture had printed in four languages for distribution at a 1930 Washington session of the Permanent International Association of Road Congress a daily bulletin of 2200 copies, containing from 66 to 146 pages with illustrations. An Inter-American Conference on Agriculture, Forestry, and Animal Industry, held in Washington during the same year, induced the Government to print in English and Spanish a large number of copies of a book, containing more than 400 pages of technical papers. The appropriation for the printing and binding of the Department of Justice, District and Circuit Courts of Appeal, increased from \$35,000 in 1912 to \$40,000 in 1921, and to \$350,000 in 1932. The appropriation for the printing and binding of the Department of Labor increased from \$84,000 in 1914 to \$200,000 in 1921, and to \$296,500 in 1932, with an issue of 1,815,450 copies of its publications for the fiscal year 1930. That for the Navy Department increased from \$153,000 in 1914 to \$250,000 in 1921, and to \$575,000 in 1932, with a total issue of 2,338,925 copies of publications for the fiscal year 1930, while the appropriations for printing and binding in the War Department for the same fiscal years were \$190,000, \$450,000 and \$500,000, respectively, with an issue of 10,182,750 copies for 1930. The Public Printer reported that for the fiscal year 1930 there had been printed for the Department of the Interior 1,995,614 copies of its publications at a total cost of \$395,805.57, or an increase of \$66,899.55 over 1929. One of these monographs is entitled "The Litanotheres of Ancient Wyoming, Dakota and Nebraska." The Veterans' Administration, created within the last few years through the consolidation of the old Pension Office, Soldiers' Home, and the Veterans' Bureau, had an appropriation of \$157,000 for printing and binding. A comparatively small part of these huge appropriations is used for the printing and binding of annual reports of the several departments and establish-

ments of the Government, the total cost of such work for the fiscal year 1930 being reported by the Public Printer at \$233,902.99, and the number being 469,829 copies. A prize of \$10,000 could be safely offered to find one man, who ever read any of these annual reports.

It seems that \$50,000,000 a year is a conservative estimate of the direct and indirect cost of publicity, which is annually unloaded on an unoffending nation by the publicity agents of the various bureaus of the Federal government and what publicity! \*

\* Senator Harrison in a characteristically witty speech gives the information:

"I will now refer to some of these striking bulletins that were issued last year at great cost. First, I refer to some issued by the Department of Agriculture:

"Utilization of the Calcium in Spinach." No doubt that will relieve many farmers who are in distress.

"Lamb As You Like It." What department, whether the Agricultural Department or any other, can tell me the way lamb should be cooked as I like it?

"Reindeer Recipes."

"Bringing Up Bobby." That tells how to bring up children. It ought to come under the Children's Bureau.

"The Use of the Metric System in Nutrition."

"Principles of Window Curtaining." That bulletin, which I have here, informs the reader that curtains are sometimes used to keep out the light from the rooms in which they are hung, and sometimes, it states, privacy can be brought about by the employment of curtains. Wonderful, striking information that these bulletins carry to the people—such information that the Government could not afford now to stop or to dispense with it!

"Suits for the Small Boy." They tell the people what suits are good for the small boy now.

"Children's Rompers." They have pictures of children's rompers in this one. It is a beautiful thing, and it tells you not to fit the rompers too tight; that they must be loose, because if they are fitted in such a way as to be too close the children will be deformed when they grow up. I would like to read that bulletin and show you just what it does say, but I will not do it.

"How to Dress for a Sun Bath." Now, that is a wonderful thing. When I was a boy I did not dress for a sun bath, but the Department of Agriculture tells you now how to do it.

"Where Sheets Wear Out."

"The Self-Help Bib."

"Self-Help Suits for the Small Boy."

"A Study of the Time Spent in the Care of Babies."

"Vitamins in Relation to Salad Dressing."

"Those are a few that were issued last year.

"Great information that we are getting out! Why, Mr. President, they even had one—I have not it here, but I read it with interest; it was one of the most fascinating and interesting pieces of literature that has come to my attention in years. It is on frogs. It told of the 'love adventures of the American bullfrog.'

"Before reading this romantic story of the frog I thought I knew something about frogs. When I was a boy I was their pal. I carry to this day living evidence of my close contact with them; but not until reading this bulletin did I realize some characteristics of the adventurous bullfrog. It told how courageous he was, and that as he and his fair Juliet sat in the sun rays upon some old log in a lonesome river, at the first approach of footsteps or noise the gentleman frog would jump off ahead to notify his fair lady that she must get out of danger also. It

Senator Harrison's attack would be full of humor for the laughter-loving American people, if it did not pitilessly illustrate the wanton injury to the tax payer in these extravagant expenditures for useless follies. A writer in the *Nation's Business* for May, 1931, stated that the bureaus, which had grown rapidly in recent years, are those best organized for publicity, including the delivery of weekly radio addresses by an assistant secretary of a department, while those which have not grown are those which have had no publicity writers. The tables show the growth of appropriations for the Departments of Agriculture and Commerce, (pp. 73-79). It is therefore not strange that the civilian employees of the Government have an organized union, with an official monthly publication, which receives wide distribution and that the service men of the world war are not unappreciative of the advantages of propaganda in securing ever greater appropriations. The postal employees have a similar organization and officers of the military and semi-military services likewise support weekly service journals.

The bureaucracy, at the expense of the tax payers, is ever at work to increase the importance and prestige of their several bureaus and incidentally their salaries, and to secure greater recognition of the rank and file of the bureaucracy. If Congress at times weakly yields to these powerful propaganda organizations, it is because they are organized and are an appreciable force at the polls, while the tax payers and consumer are unorganized and inarticulate.\*

gave me the very refreshing information that the gentleman frog only croaks or sings when he is in love.

"Then they have a pamphlet here on how to make a cat trap. It tells you that after you remove the cat from the cat trap, if you will get a sack and put it over his head, you can take him out to the river and drown him without his escaping or knowing anything about it.

"The Department of Agriculture, as I understand, is now investigating the building of a statue to the American pig. They are going to get some modern Michaelangelo to carve from marble, or bronze or something, the perfect hog. They are going to have it done in various types and models. They are going to exhibit these to the farmers throughout the country to encourage hog raising."

\* Washington spoke with the vision of a prophet when he said in his Farewell Address of 1796 that:

"All obstructions, . . . all combinations and associations, under whatever plausible character, with the real design to direct, to control, counteract, or awe the regular

These men and women of the bureaucracy, whether working at public expense to increase the size and importance of their departments, thus imposing a still greater burden on the American tax payer, or whether working through their unions to increase their own salaries, are powerfully assisted by organizations and associations not connected with the Government. The American Federation of Labor, for instance, comes to the aid of mechanics and employees of the Arsenals and Navy Yards in their disputes concerning rates of pay. Such Federation also lends assistance to the civil service clerks or postal employees in their attempts to secure higher salaries and secure tenures of office.\*

Various trade associations through their journals and letters or telegrams to individual members of Congress support the bureaucracy in requests for larger appropriations for the particular bureau or division in which such trade associations are interested. The Navy League composed of members not in the federal service supports the

deliberation and action of the constituted authorities, are destructive of this fundamental (checks in the Constitution) principle, and of fatal tendency. They serve to organize faction . . . to put in the place of the delegated will of the Nation the will of . . . a small but enterprising minority, and . . . to make the public administration the mirror of the ill-concerted and incongruous projects of a faction, rather than the organ of consistent and wholesome plans digested by common counsels and mutual interests. . . . The habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all departments in one, and thus to create, whatever the form of government, a real despotism. . . . The necessity of reciprocal checks in the exercise of political power . . . is evinced by experience, ancient and modern. To preserve them must be as necessary as to institute them. . . . Let there be no change by usurpation, for . . . this is the customary weapon by which free governments are destroyed."

\* The kindly and lovable Ex-President Taft said in 1915, in *Our Chief Magistrate and His Powers*:

"Candor compels me to refer to some dangers in our extension of the classified service and permanent tenure of employees. Substantial progress toward better things can rarely be taken without developing new evils requiring new remedies. In the classified system, there are large bodies of mail carriers, postal mail clerks, and of other subordinate civil servants, who have a common interest in an increase in their salary or other terms of their employment. They form associations or in effect trades-unions. They perfect their organizations. They publish a newspaper. Their government duties carry them into close contact with the people and voters of the various Congressional districts, and in indirect ways they seek to bring undue political pressure upon the members of Congress and the Senate to accomplish their personal desires. They are often successful in this. It is a pernicious use of the opportunities given by their official duties to secure an advance of their pay or other more favorable terms of service, on other grounds than the merit of the question."

Navy in its demand for more warships and the Association of American Ship Owners supports the Shipping Board in increasing appropriations and the Postmaster General in seeking greater subsidies for the carriage of mails. The manufacturers of airplanes favor transportation of mail by air and an even larger bureau in the Department of Commerce claims the supervision of aircraft. They are also interested in larger air forces for the Army and Navy.

The great unorganized public has no such highly organized propaganda. Its voice is inarticulate, and yet it pays the piper, but without calling the tune. Many forget their larger interest as tax payers in the hope that benefits to their trade or industry may be secured at public expense. It is easy to understand that as more mail is carried by air and the larger the air forces of the War, Navy, and Commerce Departments as well as of the Coast Guard, the more prosperous are the manufacturers of airplanes, who coined the much overworked phrase "Make America air minded." This is equally true of many other industries.

When the bureaucracy, either honestly or otherwise, agrees with the trade associations and both work to a common end, what possibility is there for the members of the Senate and House to learn the true state of the public needs? As elsewhere pointed out, President Taft more than twenty years ago admitted that it was difficult for either the President or the heads of the departments to secure adequate data on which to base policies and recommend legislative action. The average Senator or Congressman, drawn for a few short years from civilian life in which he was engaged in one of the professions or in trade, is not prepared to cope with the bureaucracy and the associations with their technical training and long experience. Congressman Reed of New York in a statement of January 9, 1932, from the floor of the House of Representatives said:

"We are living in a day of the most highly organized propaganda system in the world. It had its birth during the (World) War and it has

continued down to the present time. As a result of it, minorities have exercised great power over Congress."

He might have said "dominating power." The most that is now being done is to pare off a few millions of dollars indiscriminately from the appropriations requested by the bureaucracy and then smugly advertise to the people that Congress has cut the estimates, without really knowing whether such paring has allowed too little to meet some essential need of the Government and too much for some such folly as the food properties of the udo or that describing the "Antiscorbutic vitamin in home-canned carrots." At the time such minor cuts in estimates are being made, Congress may be creating new bureaus or enlarging the duties and activities of existing bureaus in one of the deficiency appropriation measures, which follow the annual appropriations and usually contain a nest of legislative snakes.

It was correctly stated in the Report of the Joint Committee on Reorganization of the Executive Departments, submitted by President Harding to the 68th Congress, 1st session, and ordered on June 3, 1924, to be printed:

"Hardly a session of Congress passes without the enactment of legislation creating new executive agencies, transforming old ones, or imposing new or larger duties upon existing establishments. Hardly a year goes by when some executive department does not organize a new bureau or division for the purpose of carrying out new requirements of law."

It is not only by means of press releases and fillers, bulletins, and reports that publicity is secured for the creation of new and enlargement of old activities of the bureaucracy but there are personal contacts and surveys made through the use of public money for subsistence and traveling expenses of employees and of some of the bureau chiefs and their subordinates. A statute expressly provides

that unless otherwise authorized in the law, the Government shall not be charged with the traveling and subsistence expenses of officers and employees attending non-governmental associations. To avoid this prohibition, it is conveniently provided that such official may have official business in the city, where the meeting happens to be held or in a nearby city. In fact, it was known that some years ago a certain Cabinet officer charged the Government with his traveling expenses for several return trips to his home but later was required to refund such expenses to the Government. A Senate Committee enjoyed a delightful winter holiday in Florida, while ostensibly inspecting an eternal swamp designed for a public park.

In addition to these so-called personal contacts, where an officer or employee is permitted to make trips at Government expense to various cities to interview certain men, there are other personal contacts made through so-called "surveys," the results of which may or may not be published in Government bulletins. For instance, the Department of Commerce has announced surveys to determine whether stores should make their own deliveries or let the express companies make the deliveries for them. Such a survey requires the services of employees to make examinations of the books of merchants in various sections of the country to determine the cost of maintenance of their own delivery services, including the cost of trucks, repairs, depreciation, gasoline, oil, garage rent, services of drivers and the numerous other details of such maintenance. The ramifications of this inquiry are almost infinite, as is the pending investigation of chain stores by the Federal Trade Commission. Private industry should make such surveys or studies for itself. Even when the survey is completed, it cannot be applicable to the entire country, for conditions differ in the various sections of the country.

This Government was not created for the purpose of spending public money raised through the taxation of the American people for a "specialized, restricted purpose," to quote an expression from a recent departmental radio address—for the benefit of a few at the expense of the many. That way lies destruction of a fundamental prin-

ciple of our government. It has converted a government of limited into one of almost unlimited powers.

A few days ago the *United States Daily* carried an announcement of a "study of the causes of bankruptcy" by the Department of Commerce. For years such studies have been made by credit mercantile agencies such as R. G. Dun and Bradstreet's. The Department of Justice has for many years laboriously and under special statutory directions collected statistics from all the federal courts concerning bankruptcies and yet the Department of Commerce duplicates in part this work. Proof that trade associations consider such work within their province and at their expense is shown by the examples of the Book Publishers Association, providing \$25,000 to make a study of the book trade; the Associated General Contractors of America, Inc., making a study at its own expense of building equipment, safety work, bond premiums, etc.; and of the Paving Brick Association, making experiments and study in the use of paving brick. Many other examples could be cited.

This chapter cannot be closed without referring to a radio address of January 3, 1932, by Dr. Julius Klein, in which that accomplished official and eloquent defender of Bureaucracy, said:

"A very large proportion of Government publications are sold—not given away. Does that strike you as unfair? You pay taxes, you say; then why should you have to send a dime or a quarter, or more, to get a Government book? The primary object is to make the Government publication work self-sustaining, so far as may be—to make it pay its own way. Your 10 or 15 cents (or whatever it may be) serves to cover the actual expense of publication. Thus, you who really want the book pay for bringing it out, and the cost is not saddled on other taxpayers who happen not to want it. That point about "wanting it" is an immensely vital one, and leads me to the second reason why so many of the Govern-

ment's booklets can be obtained only by purchase. The fact of the payment insures the authenticity (if I may put it that way) of the desire for the publication. You are not going to part with money, and take the trouble to transmit it, unless you really need the thing and intend to use it profitably. So you see how the sales-system tends to eliminate the deadwood—and to prevent a mere helter-skelter distribution to persons who are not really interested. It restricts the distribution to the 'live wires' who mean business. In various cases, of course, the free distribution of pamphlets, within definitely determined fields, appears entirely proper—but the plan of selling Government booklets has proved its value, beyond question, and has resulted in substantial returns to the public treasury.

Are these Government booklets actually sold in any large quantities, and do the buyers like them well enough to come back for more? They are, and they do. Here is a remarkable instance of it: For one of the more popular of the Commerce Department publications, orders have been received for more than half a million copies—enough to make a stack 14 times as high as the Washington Monument. And if we can believe what the purchasers say, they are enthusiastic about it and are profiting from it in many ways. In more cases than I could possibly enumerate, large business houses or commercial organizations have purchased enormous wholesale lots of Government publications, because they have considered their contents to be so pertinent and practical that the trade should have the advantage of them. I remember one particular case where a manufacturing firm was so thoroughly 'sold' on the value of a Government book that they bought advertising space to tell about its merits, in a straight, matter-of-fact way, and to

say that they would be glad to furnish a copy to anyone who applied. How many copies do you think this firm had to buy from the Government to fill the requests that poured in as a result of that single statement? No less than twenty-six thousand! And everybody benefited—the business firm, the Government Treasury, and the army of recipients.

Does that sound as if Government publications were predominantly trifling or rubbishy—does it sound as if they were being wastefully forced on an irritated, bored, and recalcitrant population? I think not.”

The easily proven facts are that the Office of the Superintendent of Documents, maintained at an expense for the fiscal year 1930, of \$478,543.43 for salaries alone, has charge of the sale of these Government documents, and the Public Printer, on pages 36 and 37 of his Annual Report for the fiscal year 1931, states that the Superintendent of Documents distributed 56,315,707 free copies of Government publications on orders of the departments concerned and that sale copies for the fiscal year 1930 totaled 8,578,592 copies and 8,607,247 for 1931. Receipts from these sales aggregated \$708,972.46 for 1930 and \$701,597.80 for 1931—an infinitesimal part of the cost of their preparation, printing, and distribution, when the far larger number of free copies is considered. A bookseller who would publish an expensive book, and then distribute, without cost, seven-eighths of the issue and sell one-eighth, would be regarded as headed for bankruptcy or an insane asylum. For the fiscal year 1931, the Superintendent of Documents had on hand 38,983,331 different copies, comprising 74,000 different subjects, unsold and probably unsalable. The aggregate of these sales for 1930 or 1931 is less than twice the salaries of the office of Superintendent of Documents, which only is concerned with the distribution of this mountain of so-called literature.\*

\* The Public Printer further reported for the fiscal year 1931, that:

“Of one Commerce publication alone, a 116-page illustrated pamphlet relating to Furniture, Its Selection and Use, 500,000 copies were printed in May, 1931, for sale

But let us not be too hard on Dr. Klein. Like every bureau chief he is an enthusiast and his pride in his mission at times betrays his judgment. "Great is Diana of the Ephesians."

by the Superintendent of Documents at 20 cents per copy. The Director of the National Committee on Wood Utilization, which prepared the report for the Department of Commerce, insisted that the half million copies would be needed immediately to supply the public demand for advice on the selection and use of furniture. However, to date, only about one-fifth of the copies have been sold, and the bulk of these were bought by furniture manufacturers and dealers for redistribution to prospective customers. The Department of Commerce ordered only 2,000 copies for its own use.

The total printing and binding charge for the furniture pamphlet was \$29,731.40, of which \$28,672.73 was paid by the Superintendent of Documents for the 500,000 sales copies. The receipts to date from the sale of this publication amount to \$10,503.71.

Another bit of advice to home folks, which the Department of Commerce printed last year, was a 128-page pamphlet entitled 'Care and Repair of the House,' prepared by the Division of Building and Housing of the Bureau of Standards. Sixty thousand copies of these directions for repairing 'doors that rattle, latches that stick, floors that creak, screens that sag,' etc., were printed for sale at 20 cents per copy. Nearly half that number are still in stock with the Superintendent of Documents awaiting purchase by people who may want to know how to make their homes more comfortable and attractive. This pamphlet cost \$4,869.01.

The *Commerce Yearbook* for 1931 consisted of two volumes containing a total of 1,463 pages. Of volume 1, relating to United States commerce, 14,012 copies were printed, and of volume 2, relating to foreign commerce, 7,022 copies, nearly all of which were ordered for sale by the Superintendent of Documents. The cost of the *Commerce Yearbook* for 1930 was \$32,133.96, of which \$18,500 was returned to the Government by the sale to date of 18,500 copies.

Another book issued by the Department of Commerce is the *Bureau of Standards Yearbook*, of which 5,420 copies were printed in 1931 at a cost of \$4,725.89. During the year, 2,687 copies were sold, the receipts amounting to \$2,687."

## CHAPTER VIII

### BUREAUCRACY IN UNIFORM

"Man, proud man,  
Dressed in a little brief authority,  
Most ignorant of what he's most assured  
His glassy essence." —SHAKESPEARE.

BUREAUCRACY has run wild in all departments of the Government and the results can be seen in the Army, Navy, Marine Corps and the semi-military services, such as the Coast Guard of the Treasury Department, which operates with the Navy in times of war. The Army is under the War Department, while the Navy and Marine Corps are under the Navy Department and their constitutional function, with the aid of civilians recruited or drafted for that purpose, is to defend the United States in time of war.

The First Congress created the War Department and transferred to it the infant Navy, whose administration had been lately under the Treasury Board of the Congress of the Confederation. But, as hereinbefore stated, Congress created a separate Navy Department on April 30, 1798, with a secretary at its head and thus solved the question, now before Congress, whether the performance of a definite function—such as the conduct of war—should be intrusted to a single department. Many now contend that such separation means divided responsibility and authority, duplication of organization and work, conflicts of jurisdiction, and unnecessary expenditure of public funds.

It is true that John Paul Jones won his naval triumphs and George Washington, his notable land victories, not because of the divided responsibility for the conduct of marine and army affairs, but in spite of them. The heart-breaking delay of Jones in receiving a few small vessels from France and the tragedy of Valley Forge, where Washington's men almost froze and starved in a land of plenty, are examples of both the lack of proper organization of the administrative services in charge of their activi-

ties and the impotence of such divided and irresponsible administration. It, however, had the justification that the war services, as indeed the government, were hastily improvised.

That the bureaucracy in charge has learned few lessons during the intervening period of more than one hundred and fifty years is demonstrated by the fact that it refused to accept, before the World War, the patent rights to a certain machine gun, because the responsible officers favored a different type. When we entered that war, the War Department was compelled by the inefficient operation of the machine gun which had been adopted, to purchase from our allies large quantities of the machine gun which our military bureaucracy had rejected. So little did some of the ranking officers in charge of the Ordnance Bureau during the late war know about the formulation of Government contracts, for instance—formalities which had existed since 1862—that thousands of the contracts of that bureau were improperly signed on behalf of the United States. When the war suddenly ended and the agreements then existing had to be cancelled because we no longer needed the supplies, it was then believed that the contractors could not secure payment of their claims because of their proxy-signed contracts. Thereupon the Secretary of War requested and Congress passed, the act of March 2, 1919, to validate the contracts, so that settlements could be made. Later Congress appropriated several millions of dollars for the establishment and maintenance for a time of the so-called War Transactions Section in the Department of Justice to review these settlements and to recover any illegal or erroneous payments.

The tenacity with which the Army clings to outworn modes is illustrated by the fact that officers, holding desk positions in the War Department, wear useless spurs on their boots. It required the combined efforts of Secretary of the Treasury McAdoo and President Wilson to compel an officer of the Army, then in charge of public buildings in Washington, to issue a permit to a contractor, who was excavating the site for the present Interior Department

Building, to enable him to haul the dirt away by cars running on the street car tracks near the building instead of using the slower and more expensive method of trucks. The refusal to grant the permit was being used to compel the contractor to agree to give to the Government the estimated difference in the cost of moving the dirt by the two methods.

The Navy bureaucracy, even though the larger part of the lives of its members is devoted to the sea, cannot claim the credit of the two greatest developments in naval warfare—the use of steam and of steel-clad ships. Both were civilian developments, as was also the work of civilian engineers in the development of aircraft, that most important arm of defense for both the Army and Navy. In fact, even after airplanes had been developed and thousands were in use by both the allied and central European powers, the Army spent millions of dollars in acquiring spruce timbered lands in the West and in developing a new type of engine, but placed few, if any, American built fighting airplanes on the battle front of Europe during the period from April 6, 1917, when we entered the war, until November 11, 1918, when the fighting ceased. The ineptitude, which spent billions with no adequate results, was all forgotten, and the nation laughed at its gigantic losses, when General Dawes silenced all criticism with his explosive but unconvincing argument, "Hell and Maria." While this is so, the fact that we organized an army of 3,000,000 and sent more than a million to France within a year, was a stupendous achievement, and quite outweighs the fact that we also spent billions on ordnance and aircraft and yet were largely dependent upon our allies for both. It should be also remembered that the unpreparedness, which existed, when America entered the World War, was primarily and chiefly due to the President, as Commander-in-Chief. Although it was apparent as early as the spring of 1915 that America would inevitably be sucked into the maelstrom, Mr. Wilson discountenanced all efforts of the Army and Navy to prepare for that dread eventuality.

A bureaucracy rarely learns. If some of its members do

learn, they are unable to convert their learning into service in the correction of defects because their superiors are intolerant of changes. As Balzac correctly stated in his book, *Bureaucracy*, concerning certain aspects of the French Administrative service:

"Bureaucracy, made up entirely of petty minds, stands as an obstacle to the prosperity of a nation; delays for seven years, by its machinery, the project of a canal which would have stimulated the production of a province; is afraid of everything, prolongs procrastination, and perpetuates the abuses which in turn perpetuate and consolidate itself. Bureaucracy holds all things and the administration in leading strings; it stifles men of talent who are bold enough to be independent of it or to enlighten it on its own follies."

There are two sources from which officers may enter the Army, Navy, Marine Corps, and Coast Guard, respectively. They may enter the Army as the result of graduation from West Point or from civilian life as the result of a successful examination. They may enter the Navy or Marine Corps as the result of graduating from the Naval Academy or from civilian life as the result of a successful examination. They may enter the Coast Guard as the result of graduation from the Coast Guard Academy or from civilian life as the result of a successful examination. The men generally enter in the lowest grades and in the Army they are promoted in accordance with seniority to the grade of colonel. Any promotions to the various grades of General are based on selection, usually by the Chief of Staff with the approval of the Secretary of War and by the President by and with the advice and consent of the Senate. It will readily be seen that during most of a man's life in the Army, between the grades of second lieutenant and colonel, nothing these men can do will hasten their promotion to higher ranks and responsibilities. There is no adequate incentive to greater achievements, for many a man has spent the better part of his

life in the Army and has been retired for age without getting beyond the grade of captain or major. Napoleon believed in the "career open to talent." His officers could cherish the hope of a marshal's baton in every knapsack.

The Navy, Marine Corps, and Coast Guard officers are promoted on the basis of examinations as to their physical and professional fitness by a board of examining officers, but even though they pass such examinations they are not necessarily promoted to higher grades.

The Navy system of promotion is even worse than that of the Army in creating a bureaucracy, which is watertight and as difficult to control as a porcupine with bare hands. The younger officers must come before a board of their superiors in rank and length of service. The board is at liberty to scrutinize the entire record of the officer under examination and ordinarily he must conform to the ideas of the bureaucracy or else he has little chance for promotion. Can anyone point to a single junior officer of the Navy or Marine Corps, who has shown any independence in his official action, unless he had a powerful supporter? General Butler showed some independence while his father was a member of Congress and Chairman of the House Committee on Naval Affairs, but when Congressman Butler died a few years ago, General Butler speedily became conscious of a different attitude and ultimately retired from the service. He was often imprudent in speech due to temperamental defects, and yet it was Major Butler, when his small command of marines was faced by a large force of Chinamen during the Boxer uprising, fanatical in their desire to exterminate all members of the white race in China, who defended his fellow countrymen, including a future President of the United States.

Many of the cadets at West Point and at the Naval Academy are sons and grandsons of Army and Navy officers. It is natural and desirable that a son should follow in a father's or grandfather's footsteps, but it inevitably tends to create cliques, and cabals in the service.

The President, as Commander-in-Chief, is nominally responsible for the conduct of the Army and Navy, but

even Washington could not perform the executive work of the Federal Government without the aid of secretaries of various departments, into which the comparatively small amount of executive work could be divided. Such a statement is far more true today than in 1789. Today it is an obvious impossibility for a President to supervise the work and personnel of these services, even if he had the technical training for that purpose. He has a civilian secretary and two civilian assistant secretaries for the Army, and a secretary and two civilian assistant secretaries to assist him in the supervision of the Navy.

The Secretaries of the three departments of Treasury, War and Navy, as well as the Assistant Secretaries of these departments, are appointed by the President by and with the advice and consent of the Senate. They hold office during the pleasure of the President and not infrequently are changed at least once during a four-year term of a President. Rarely do they serve more than eight years. Generally, though not always, the Secretaries and Assistant Secretaries of departments change with each President, and are dropped from the service with each change of administration.

They do not generally come into office with any specialized or even general knowledge of the duties of their positions, and they do not remain in office long enough to obtain that knowledge. The result is that these civilian officers are naturally, almost inevitably, guided by the bureaucracy of their departments. If a request for information comes to the Secretary or Assistant Secretaries of the departments, the letter is routed down the line to the subordinate clerk or officer who had the matter in charge. There the reply is prepared and routed back through the immediate superiors, who either revise the letter or add their initials to a carbon copy thereof, until the letter reaches the Secretary or Assistant Secretary of the department where it is signed—with nothing to show to the outside world on the letter itself that it was not laboriously and painstakingly prepared by the person who signed it.

The impossibility of the secretaries' and assistant secre-

taries' of the War and Navy departments becoming familiar with the laws, regulations, and procedures, which have been constantly growing since 1789, force them to rely on the bureaucracy, but not always are officers supplied with all of the facts by its members. This is due to the fact that rarely will one subordinate voluntarily expose a fellow member's deficiencies, for secretaries and assistant secretaries may come and go but the bureaucracy goes on forever and at some appropriate future time the exposing member may be punished. The world knows what happened to General Mitchell a few years ago when he criticised both his fellow officers in the Army and the Navy for refusing to approve a unified air service. He accused them of spending vast sums of public money appropriated for the purchase of airplanes and yet few of the latest type were in service, and many of them were unsafe. General Mitchell was court-martialed and resigned from the Army in disgust.

It is contended by many that a grave mistake was made by Congress in the act of April 30, 1798, in separating the Navy Department from the War Department and, in 1790, in not placing the Revenue cutter service, now a part of the Coast Guard, in the War Department, as such division has inevitably led to a great and most expensive duplication of work. Both the Army and Navy have different systems for purchasing and for the accounting and control of public property after it has been purchased. There are many hundreds of commissioned officers of both services, with large office forces of civilian clerks, engaged in this work and the consolidation of the business activities of the two Departments would require a smaller number of governmental employees.

What is true of purchasing and property accounting officers and employees is equally true of the separate disbursing systems which have been established for the two services, duplicating the cost of maintenance of separate offices and warehouses in many cities of the United States, especially along the seaboard, together with the vast expense in the duplication of recruiting and inspection. The services maintain separate arsenals and navy yards

with their excessive expenditures for labor and overhead and both are engaged in the manufacture of arms and ammunition and repair work for their respective services. The arsenals do not repair ships, as do the navy yards in some instances, but such minor differences in field services do not answer the contention that from the standpoint of both economy and efficiency the Army, Navy and Marine Corps might be consolidated into one service and the Coast Guard and its vessels transferred to the new and enlarged department. Moreover, even consolidations of minor services could leave the higher functions to two departments, as now, for the unreasoning jealousy, which the Army and Navy feels for the other branch of the service, makes it doubtful whether a complete consolidation would not be destructive of co-operative effort. Possibly the control of such non-military activities, as dredging rivers and harbors, and the building of dams and levees along navigable streams or bridges across them, could be taken from the War Department. There was at the beginning some justification for the placing of public engineering work on rivers and harbors under the War Department.

To this duplication of effort, must be added the aircraft building of the Army and Navy and even a small air force in the Coast Guard with little regard for the fact that in the event of war these air services should, and may be compelled to, operate together and that approximately half of the present administrative personnel could efficiently conduct the supervision of all the services of both departments with less expense to the taxpayers for salaries and overhead and with increased efficiency! \*

\* We are expending annually for military and naval purposes, double the amount the taxpayers of this country were paying prior to the war, as shown by the accompanying table.

	Army	Navy	Total
1914 . . . . .	\$173,522,804	\$139,682,186	\$313,204,990
1915 . . . . .	172,973,092	141,835,054	314,808,746
1916 . . . . .	164,635,577	155,029,426	319,665,003
1926 . . . . .	355,072,226	312,743,410	667,815,636
1927 . . . . .	360,808,777	318,909,096	679,717,873
1928 . . . . .	390,540,803	331,335,492	721,876,295
1929 . . . . .	416,901,546	364,561,544	781,468,090
1930 . . . . .	453,524,973	374,165,639	827,690,612
1931 . . . . .	478,418,974	354,071,004	832,489,978

Shortly after the World War a British committee on national expenditure was appointed and it reported on December 14, 1921, that the British Army and Navy should be united; that until this was done the elimination of overlapping and wasteful expenditure was impossible; and that while officers of the Army and Navy were opposed to such unification, it was the opinion of the Committee that:

“. . . full economy in the Fighting Service cannot be realized under existing conditions. There is overlapping and duplication throughout. In order to fully realize these economies, the three forces (Army, Navy, and Air Service) must be brought together by the creation of a co-ordinating authority or a Minister of Defense responsible for seeing that each force plays its part and is allotted appropriate responsibility for carrying out various functions. The theory of such a Ministry in embryo appears already to exist in the Committee of Imperial Defense. With the creation of a co-ordinating authority or Ministry of this description it would be possible to insure that corresponding reductions in expenditure were realized, when either of the older services was relieved or assisted, and no additional expense or extra ministerial appointments need, in our opinion, be involved, as the Minister and his staff could all be drawn from existing organizations. All the arguments of an economic character which could be urged for the absorption of the Air Force into the two older services apply, in our opinion, also, to the fusion of all three services under one Minister. Complete co-ordination in supply, transport, education, medical and other services would then be possible.”

The United States has the same problem, but as in England, when a bill was introduced in the present Congress

to bring about such unification, the bill was opposed by the Secretaries of the War and Navy Departments, their bureau chiefs and the officers under them, and was defeated in the House of Representatives. In time, such unification may become an actuality, and the activities of such services confined strictly to military and naval matters. That the dredging of rivers and harbors, the building of levees and flood protection work, the operation of a fleet of boats on certain of our rivers through the medium of the Inland Waterways Corporation, the construction of buildings at Army and Navy stations, should be under the control of the military services is of doubtful wisdom. An Administration of Public Works should be created, as recently recommended by President Hoover, to which should be committed the construction activities of departments and establishments of the Federal Government. Such bureau could utilize, when desirable, the unquestioned ability of the Chief of Engineers and his very capable staff of trained officers.

The huge military machine has many ramifications. There have been few men in public life more familiar with the administrative establishments than President Taft. In his message of February 26, 1913, transmitting to Congress, with approval, a report of the President's Commission on Economy and Efficiency, he said:

"The highly complex and technical character of questions that must be decided by executive heads of departments is suggested by the complexity of department organization. In the Department of the Navy, for example, there exist at present 34 navy yards, and stations, 31 naval coaling plants, 43 naval wireless stations, 12 naval magazines, 14 purchasing, pay and disbursing offices, 9 inspection districts, 16 hydrographic offices, 20 hospitals, 20 dispensaries, 14 naval schools, 3 schools for the Marine Corps, 7 naval medical schools, 4 naval training stations, 13 naval target ranges, 1 target range and permanent camp of instruction for the Marine

Corps, 3 medical supply depots, 13 recruiting stations, 48 marine posts and stations, and a naval militia, besides the Fleet, which is the actual fighting machine of this branch of the establishment. More concretely, the administrative requirements may be shown by reference to a single station, such as the proving ground at Indian-head. Here, under the jurisdiction of the senior assistant, are a police force, office buildings, and grounds, living quarters, a water supply system, boats and wharves, a railroad, a power plant, a carpenter shop, an electrical shop, a tin shop, a repair and pipe fitting shop, and a storehouse; and under the jurisdiction of one officer, known as the powder expert, is a chemical laboratory, a sulphuric acid factory, ether factory, dry house, boiling tubs, dehydrating house, an intensifier house, a solvent recovery house, a reworking house, a press house, a blending and packing house, a nitric acid factory, a poaching and pulping house, a mixing house, a powder factory and magazines, a signal house, a rocket house, and a storehouse. These may be taken as illustrative of the character of administrative attention required in directing and controlling the activities of one of the many institutional subdivisions of one department of the Government."

President Taft thus described the bureaucratic activities at only one of the many naval stations. Multiply these activities by the number of navy yards, shore stations, hospitals, etc., possessed by the Navy Department and multiply the number of similar activities operated by the Army and Coast Guard and the fact will be appreciated that it is an impossibility for politically appointed secretaries of the War and Navy departments and their politically appointed assistant-secretaries to supervise effectively the activities of their departments during their short tenures of office. President Taft confessed in the quoted message that legislative and executive decisions had

to be made without the essential facts and that the President's efforts to obtain information as a basis for executive action and for concrete recommendations frequently resulted in failure.

And how could it be otherwise under the present organization of the administrative machinery of the Army and Navy Departments and of the Coast Guard? The War Department, for instance, is reported by the Civil Service Commission to have had on June 30, 1930, a total of 50,289 civilian employees, such as clerks, stenographers, typists, filing clerks and others on its payroll, and the Navy had 47,696. The Secretary of the Navy admits in his annual report for 1931 that there were 2,017 such clerks in the department in Washington and 45,956 at stations outside of Washington, an increase from 787 and 35,285, respectively, since the pre-war year of 1916.

To these must be added an army of approximately 100,000 men and women, who are civilian clerks for the Army, Navy, Marine Corps, and Coast Guard, the commissioned officers, non-commissioned officers, enlisted men nurses, contract surgeons and others. The Navy had 9,260 and the Marine Corps 1,030 commissioned officers of various grades for the fiscal year 1931. The Navy had a daily average enlisted personnel of 82,564 men and the Marine Corps had an enlisted personnel of 17,586. The Coast Guard had 417 commissioned officers, 874 warrant officers, and 10,589 enlisted men. The Army had 12,099 officers of the Regular Army, 78 officers of the Philippine Scouts, 1,028 warrant officers and 119,010 enlisted men, not including 6,433 men in the Philippine Scouts. There were also 120,550 members of the Officers' Reserve Corps and 190,000 officers and men in the National Guard units of the various states. These figures do not include 926 cadets at West Point, 1,922 cadets at the Naval Academy, and 85 cadets at the Coast Guard Academy. Nor do they include 809 Army nurses, 529 Navy nurses, and 31 contract surgeons.

The Coast Guard is not primarily a fighting force, but it is required to operate as a part of the Navy in times of war. Adding the members of the Coast Guard, who are

constantly on active duty, and eliminating the 310,550 members of the National Guard and Officers' Reserve Corps of the Army, who are not on active duty in any considerable numbers for more than 15 days in any one year, it will be seen that with the vast civilian clerical force of approximately 100,000 men and women, the military payrolls of this country bear 22,884 commissioned officers, 1,902 warrant officers, 236,182 enlisted men, 1,338 nurses, and 2,933 cadets, or a total of 363,337 individuals.

The public funds required by these services during the fiscal year ended June 30, 1931, are interesting. The Coast Guard alone had \$35,508,985.22 or more than the entire cost of the Federal Government during its first few years. The Navy had available for the fiscal year 1931 the sum of \$498,264,700.00 and it expended the sum of \$357,-806,219.00. The War Department had available for expenditure the huge sum of \$411,817,027.47 for military activities and \$295,707,710.51 for non-military activities, or a total of \$707,524,737.98.

These great war machines cannot be eliminated in this stage of world unrest. On the contrary, they should and doubtless will be further increased in such a manner that they may be easily and quickly expanded in event of war. They require the professional soldier, sailor, or aviator in a far greater degree than in any previous time. War is to-day a mechanical and chemical science, and requires the greatest expert knowledge.

Yet the military bureaucracy must be controlled in the interest of both peace and economy. The growing expense of government demands that the duplication in plants be eliminated and that minor and non-military functions should be consolidated. This reform should not wait until war is again upon us, for the Nation could profitably remember the confusion, lost motion, and cross purposes, which existed shortly after we entered the World War and until there was created a War Industries Board to bring some order out of chaos. The present capable Chief of Staff, the highest ranking officer in our military establishment, suggests in the Annual Report of the Secretary of War for the fiscal year 1931, that in the next war

there be re-established the War Industries Board of 1918, with certain enlarged powers, saying "it is evident that the existing cabinet departments are not adaptable to the performance of these war duties." To which it may be replied: "If eventually, why not now?"

Who would dispute his statement that the War and Navy Departments are not adaptable to the conduct of modern warfare in its business details nor to present to the President a uniform course of action which would deal adequately with all the details mentioned in the extracts quoted from President Taft's message to Congress. The existing system should not be permitted to continue its costly duplication of effort, waste of public funds, and bureaucratic control until the war clouds suddenly cover the skies. Such preparation should be made in times of peace—particularly in order to establish an administrative system capable of presenting uniformity of command during war and of securing economy and efficiency in times of peace, with adequate control over the military arm of the Government.

It may be, but the question is very debatable, that these results can only be accomplished by a return to the plan, originally adopted in 1789 by Congress, of placing the Army and Navy under one secretary and the elimination of all non-military activities of the War and Navy Departments. This secretary could have four assistant secretaries, respectively having immediate charge of (1) the Army and Marine Corps; (2) the Navy and present Coast Guard, except the life-saving service; (3) the present Air Services of the Army, Navy, and Coast Guard; and (4) the purchase of materials and supplies, including transportation, needed by all of the other three branches of the service, and the operation of such of the existing arsenals and navy yards as it may be necessary to operate, either separately or combined, to meet the needs of the service.

These assistant secretaries and their immediate assistants should hold office during good behavior, and with the exception of the head of the purchasing system, they should be soldiers by profession, so that they may master the duties and responsibilities of the branches of the service

in their immediate charge. By such means duplication will be reduced to a possible minimum and they would be able to control the bureaucracy through exhaustive knowledge of every aspect of their duties. These assistant secretaries could keep the head of the Department and the President informed as to any important matter of policy or procedure. It is in the interest of the public service that many of these swivel-chair strategists be returned to active service with their commands.

The foregoing only suggests the arguments made by those who would consolidate the two services in one. The wisdom of such consolidation has been gravely questioned by many whose "judgment in such matters cries in the top of mine." The two fighting arms of the service are so different, and the jealousy between them so rampant, that if they were united under one Secretary and in one Department the Kilkenny cats would soon lose their traditional reputation for quarrels. The dispute between West Point and Annapolis as to the annual football game is one illuminating illustration of the disposition of the Army and Navy to dispute over trifles.

## CHAPTER IX

### CIVILIAN BUREAUCRACY

'The time has come,' the Walrus said,  
    'To talk of many things:  
    Of shoes—and ships—and sealing-wax—  
    Of cabbages—and kings—  
    And why the sea is boiling hot—  
    And whether pigs have wings.'

'But wait a bit,' the Oysters cried,  
    'Before we have our chat;  
For some of us are out of breath,  
    And all of us are fat!'  
'No hurry!' said the Carpenter.  
    They thanked him much for that.

—ALICE IN WONDERLAND.

JOHN QUINCY ADAMS's administration closed the Republic's first period from 1789 to 1829. The civilian employees of the Federal Government were then few in number, aggregating about 3,000 in 1830, and the chief officials were personally selected by the President or the heads of the respective departments. In nothing did Washington better show his great qualities as an administrator than in such selections. No friendship or personal interest could sway him from selecting the best man. Yet even he was at times deceived, notably in his Attorney General (Randolph) to whom he addressed a stinging letter as to Randolph's frequent absences from the Capitol, reminding him that public office was not a sinecure. Competent men were generally chosen for public office and they were usually retained in the public service as long as they were effective public servants. Andrew Jackson opened the second period, from 1829 to 1883, by adopting Marcy's rule of practical politics that "to the victor belong the spoils" and throughout that long period we had the "spoils system." The Tenure of Office Act of 1820 provided that certain officers of the Government shall be "removable from office at pleasure." In the course of eight years, Jackson removed from office more men than had been

removed during the preceding forty years of the Federal Government.

The spoils system flourished under the successors of Jackson and in 1846 Calhoun declared in the Senate that "the presidential election is no longer a struggle for great principles, but only a struggle as to who shall have the spoils of office." Victory at the polls was considered a sufficient mandate to turn out of office all incumbents who had been appointed by the opposition, including the minor positions not only in the field services but in the departments in Washington. Many of the poorly-paid government clerks were pitilessly turned into the streets, and doubtless some were unable to return to their homes without financial assistance.

This topsy-turvy and inefficient system of conducting the business of the United States led also to the increase of civilian employees to approximately 100,000 in 1880. The ordinary revenues had increased at the same time to \$333,000,000.

The demand for civil service reform culminated in an act of 1883, providing for a National Civil Service Commission, whose functions were then, and are now, largely limited to fit selections for the civil service of the Government through the requirement that they take and pass certain examinations. The Civil Service Commission could not render any effective assistance in keeping an employee in the federal service, if his immediate superiors saw fit to get rid of him on one excuse or another. Basically that condition prevails today, though the civil service employees of the Federal Government have established a union, whose chief function seems to be to persuade Congress to grant higher salaries, longer holidays, and more security of tenure. Sixty days' leave with pay and compulsory Saturday holidays are some expensive results of this pressure. The Employees' Union has secured a Classification Act, which established a separate agency of the Government to classify them, in whatever department or agency employed, on the basis of their duties and for which scales of salaries were fixed in the act. The Union is now attempting to secure the creation of a Board of

Officials to hear and control their grievances concerning either their classification or their differences with section and bureau chiefs, which might lead to either demotion or dismissal from the service. The late Secretary of the Interior Franklin K. Lane said of the government clerks:

"Every one seems to be afraid of every one. The self-protective sense is developed abnormally, the creative sense atrophies. Trust, confidence, enthusiasm—these simple virtues of all great business—are the ones most lacking in government organization."

Balzac years before had summarized a similar situation in France in *Bureaucracy*, as follows:

"Under the present system the government loses fully four hours out of the nine which the clerks owe to the service,—hours wasted as we shall see, in conversations, in gossip, in disputes, and, above all, in underhand intriguing. The reader must have haunted the bureaus of the ministerial departments before he can realize how much their petty and belittling life resembles that of seminaries. The government clerks, forced to be together for nine hours of the day, looked upon their office as a sort of classroom where they had tasks to perform, where the head of the bureau was no other than a schoolmaster. A government office is, in short, a microcosm of society, with its oddities and hatreds, its envy and its cupidity, its determination to push on, no matter who goes under, its frivolous gossip, which gives so many wounds, and its perpetual spying."

The descriptions by the late Secretary Lane and Balzac apply today to many of the clerks in the departments and independent establishments at the seat of government and may be applicable to field offices, having considerable

numbers of employees. However, the author can testify of his own personal knowledge, that among the higher grade employees, which include the professional men and women in the federal service, there are many of superior ability, training and industry, who have entered the civil service in the lower grades and have advanced to the top of that service. Certainly, the demoralization of the old spoils system has been largely ended. In some of the technical bureaus, the chiefs are selected from the more accomplished and able of the civil service employees, though this is not generally true of bureaus performing non-technical or administrative duties, and in this connection Senator James A. Reed, who had a long career in the Senate, said in an address of July 22, 1921:

"Men come to Congress because it is regarded as a great honor. How long it shall continue to be, I do not know. Men seek the Presidency because of its great honors. Men aspire to Cabinet positions because of their great honors. Not so the bread and butter brigade who come to Washington attracted by meager salaries. Such individuals flock here because they can get more money here than they can at home. The salaries paid by the Government are usually below those paid in the various communities of the United States for similar services. Why then do they come here? Examine in 99 cases out of 100 you will find that they are failures and could not make a living at home. I have seen some of them arriving with their feet sticking from the sides of their shoes. I have seen them come without money to pay a week's board bill. I have seen them come outcasts and failures in the commercial and industrial world. I have seen them the next day wearing an official badge, authorizing them to enter the greatest business institutions in the country and to demand books and papers. I have observed the spectacle of these men, incompetent to hold employment in that plant,

undertaking to lay down rules and regulations for its management."

The chiefs of bureaus of the Army and Navy Departments are usually army or navy officers, respectively, detailed for such service for not exceeding four-year periods. These officers are not necessarily skilled in the duties of their bureaus, the Navy Department, for instance, having at one time been known to have a Judge Advocate General, who was not a member of the bar.

The desks of higher offices in the government service are effectively closed by the politicians to the more able men in the Civil Service. This situation in the federal service is similar to that of France, as described by Balzac in his *Bureaucracy*:

"All the higher offices were gained through parliamentary influence, royalty had nothing now to do with them, and the subordinate clerks became, after a time, merely the running-gear of the machine; the most important consideration with them was to keep the wheels well greased. This fatal conviction entering some of the best minds smothered many statements conscientiously written on the secret evils of the national government; lowered the courage of many hearts, and corrupted sterling honesty, weary of injustice and won to indifference by deteriorating annoyances. A clerk in the employ of Rothschilds corresponds with all England; another in a government office, may correspond with all the prefects; but where the one learns the way to make his fortune, the other loses time and health and life to no avail. An undermining evil lies here. Certainly a nation does not seem threatened with immediate dissolution because an able clerk is sent away and a middling sort of man replaces him. Unfortunately for the welfare of nations, individual men never seem essential to their existence. But

in the long run, when the belittling process is fully carried out, nations will disappear. Every one who seeks instructions on this point can look at Venice, Madrid, Amsterdam, Stockholm, Rome; all places which were formerly resplendent with mighty powers and are now destroyed by the infiltrating littleness which gradually attained the highest eminence."

This "infiltrating littleness" is much greater under civil service laws since 1883, than it was during the period intervening between 1829 and 1883, when efficient administration was frankly subordinated to the principle of to the "victor belongs the spoils." A man or woman, who came into the federal service under the spoils system, had to have more or less ability to render such effective political service as to earn the gratitude and support of a member of the Senate or of the House of Representatives or both. It is true that the federal service was thus largely recruited every few years by new and vigorous blood but such a system is not now adapted to the highly technical character of most branches of the federal service.

The situation could be largely corrected by opening up new avenues to the advancement of able and ambitious civil service employees to the higher positions of trust and confidence in the Nation. No man has ever been permitted to rise from the position of attorney in the Department of Justice to an associate justiceship of the Supreme Court of the United States or to the position of a Cabinet member. A very few men, appointed for political reasons to the Department of Justice or other legal services of the Government, have been elevated after short periods of service to minor judgeships, but even these instances are unfortunately exceptional.

After President Taft left the White House and before he became Chief Justice of the United States Supreme Court, he had an interval of leisure, during which he wrote a book entitled, *Our Chief Magistrate and His Powers*. No one could discuss the limitations of the Chief

Executive with more practical knowledge. He contended that the President—

"ought to have the appointment of his Cabinet officers, and he ought also to have the appointment of a political undersecretary in each department to take the place of the head of the department, when for any reason the head of the department is not able to discharge his usual duties. All other officers in the departments, including the Assistant Secretaries and the Chiefs of Bureaus, should have a permanent tenure and not change with each administration. This would greatly facilitate the continuity of the government and prevent the halt and lack of efficiency that necessarily attend a change in the Assistant Secretaries in each department and in the Chiefs of all Bureaus. For a year and a half, at least, sometimes for a longer period, it throws the administration of the department into the complete control of minor subordinates, the Chiefs of Divisions and Chief Clerks, and makes the inexperienced heads of departments, Assistant Secretaries, and Chiefs of Bureaus entirely dependent on such subordinates."

My own experiences in various legal offices in the executive branch of the Government and my later experience in the legislative branch confirmed me in the belief that the only hope for an efficient government lies in adopting the foregoing suggestion of President Taft, with the possible exception that political undersecretaries may be undesirable. The members of the bureaucracy, if promoted to the higher offices of the government, would be of immeasurable aid to Congress in ascertaining the real facts and needs of their departments, and Congress through its agent, the Comptroller General, and through its committees of investigation, could control the minor members of the bureaucracy in event these members in higher offices failed to do so. Congress could and should revert to its

earlier procedure of appointing committees to make an exhaustive examination of the various governmental agencies to see whether their reports are in accordance with the facts and such committees could require the assistance of employees from the office of the Comptroller General, who are engaged in supervising the financial accounts of the respective governmental agencies.

The list of civilian employees of the Federal Government has grown from approximately 3,000 in 1800 to an army of 608,915 on June 30, 1930, but the latter number does not include the employees of the legislative or judicial branches, nor 33,483 clerks at fourth class post offices who are employed and paid by the postmaster, nor 22,240 mail messengers. The American taxpayers are required to bear a burden of \$1,403,110, for the sole purpose of holding examinations, grading papers, etc., connected with the labor turnover in these civil service positions in the federal service. Had our civil service grown proportionately with population it would today be about 100,000. Today it approximates 750,000.

A large turnover is inevitable, as the federal service is now organized, with many of the higher offices reserved for politicians and closed to the career men. A large number of the ablest and most ambitious men in the civil service, knowing that the door to advancement beyond a certain point is closed against them, resign from the federal service to enter the employ of great business establishments and to use their superior training and ability on behalf of their clients.

Many faithful public servants know that they are denied the privilege of advancement. Thus they lose ambition and courage after a time, as described by Balzac, and abandon the federal service for more lucrative and important positions in private life. The Government cannot afford to lose the ambitious class, while those who sullenly acquiesce in their subordinate positions develop into typical bureaucrats, content to take the line of least resistance and always endeavoring to magnify the importance of their positions in order to develop them into larger positions, in name, if not in fact, or even bureaus

with increased authority, prestige, and salary. They are hostile to any change in the organizations of their departments for fear that such reorganizations may affect their salary and position. As President Hoover almost pathetically said in his annual message of December 3, 1929, to Congress:

"The presentation of any specific plan at once enlivens opposition from every official, whose authority may be curtailed or who fears his position is imperiled by such a result; of bureaus and departments, which wish to maintain their authority and activities; of citizens and their organizations, who are selfishly interested, or who are inspired by fear that their favorite bureau may, in a new setting, be less subject to their influence or more subject to some other influence."

As the heads and assistant heads of the various departments and establishments do not, and cannot know of the actual needs of the services under their direction, the minor bureaucrats have their own way, even though, as stated by President Hoover in his annual message of December 3, 1929, there had been recommendations for a period of 20 years to correct the situation. Neither the secretaries of departments nor assistants to such secretaries have either the time or training to become personally familiar with the laws and regulations governing their departments, especially its fiscal laws and regulations. In fact, it is more difficult for employees of some of the departments to secure a personal interview with department heads than for a citizen to secure a personal interview with the President of the United States. It is doubtful whether the head of any department has personal knowledge of the work performed and the abilities of more than a mere handful of the thousands of employees serving under him. The fact is that our Government is top-heavy. It is a giant with feet of clay.

There is no reason why the assistant secretary of the

departments and assistant heads of independent establishments, whatever may be their title, should not be filled, as suggested by Mr. Taft, through promotions from the classified civil service and when this is done, real progress may be expected in correcting the present defects, which are best known to the civil service employees. The heads of departments would thus have available trained assistants to inform and guide them and to inform Congress in all matters affecting the economy and efficiency of the particular service. Such promotion would make them less inclined to tolerate inefficiency in the public service.

The appointment of boards and commissions, for the most part unacquainted with the history and procedures of the various departments and establishments, to recommend reorganizations of the federal service is worse than useless. They accomplish little and are always slow and expensive. These commissions are like the promissory notes, which Mr. Wilkins Micawber gave his unfortunate debtors, with the pious remark: "Thank God, that debt is paid."

The average civil service employee knows that such commissions are either politicians or visionaries, bent on reforming something they know little about and he is therefore disinclined to furnish the technical knowledge which might destroy the *status quo*. He would rather "bear the ills he has, than fly to others that he knows not of" and opposes any attempt at reorganizations, which may affect his tenure of office, prestige, or powers.

Government is no longer the simple proposition it was in the days of Andrew Jackson. It is a complex machine, which must be simplified, if ever, by enlisting the support of the capable men and women in the federal service who know its defects.

Through the enlistment of such assistance, with the opening up of higher offices to civil service men and women of proven ability, there would be an incentive for able and ambitious men to devote their lives to the federal service and not use it, as the more able now do, as a place of training for lucrative private employment.

At present, our government is a vast circumlocution

office, such as Charles Dickens described in "*Little Dorrit*," whose guiding policy and main objective is to practise how *not* to do it.

No one, not even Balzac, has ever described more forcefully the evils of bureaucracy than Charles Dickens in this great novel, and his picture of the Circumlocution Office, as he knew it in his own country and in his own time, is truly applicable to the federal government. After satirically observing that the vital principle of the Circumlocution Office was to devise a way "how not to do it," he adds:

"It is true that How not to do it was the great study and object of all public departments and professional politicians all round the Circumlocution Office. It is true that every new premier and every new government, coming in because they had upheld a certain thing as necessary to be done, were no sooner come in than they applied their utmost faculties to discovering "*How not to do it.*" It is true that from the moment when a general election was over, every returned man who had been raving on hustings because it hadn't been done, and who had been asking the friends of the honourable gentleman in the opposite interest on pain of impeachment to tell him why it hadn't been done, and who had been pledging himself that it should be done, began to devise, "*How it was not to be done.*" It is true that the debates of both Houses of Parliament the whole session through, uniformly tended to the protracted deliberation, "*How not to do it.*" . . .

"Because the Circumlocution Office went on mechanically, every day, keeping this wonderful, all-sufficient wheel of statesmanship, "*How not to do it,*" in motion. Because the Circumlocution Office was down upon any ill-advised public servant who was going to do it, or who appeared to be by any surprising accident in re-

mote danger of doing it, with a minute, and a memorandum, and a letter of instructions, that extinguished him. It was this spirit of national efficiency in the Circumlocution Office that had gradually led to its having something to do with everything. Mechanicians, natural philosophers, soldiers, sailors, petitioners, memorialists, people with grievances, people who wanted to prevent grievances, people who wanted to redress grievances, jobbing people, jobbed people, people who couldn't get rewarded for merit, and people who couldn't get punished for demerit, were all indiscriminately turned up under the foolscap paper of the Circumlocution Office."

Every word of this biting satire could be applied to the confusing attempts of our Federal Government in the last twelve years to reform the federal service. President after President has recommended re-organizations, but whenever the Congress passes any measures which are helpful in that direction, too often the President and his subordinates have refused to accept them. There has been, between the Executive and the Congress, an invincible antagonism, and both have proceeded in the spirit of "*How not to do it.*" If the President's wise suggestions for re-organizations are defeated by Congress, the equally wise suggestions of the Congress are ignored by the Executive.

In the present (72d) session of Congress, re-organization, and incidental governmental economies, have been a shuttle-cock, driven between the White House and the Capitol, as though it were a game and not a serious necessity. While the President has no power to re-organize the departments and avoid the useless duplication of bureaus without the consent of Congress, it is equally clear that he has ample power to reduce the excess army of federal employees by simply exercising his power of removal. All he need do is to have the department heads make a careful survey of their respective departments, to ascertain which of the employees are really needed by the government and which have only sinecures. This being ascertained, the

President or the department heads can remove any unnecessary employees, and, as was shown in an earlier chapter of this book, his power to do so is a constitutional power, with which Congress could not interfere, even if it would. The sinecure thus eliminated, the appointing power is under no obligation to appoint a successor. This is the easy way to a reduction of unnecessary offices.

On the rare occasions, when any American President has attempted to reduce the horde of federal employees, now numbering over 750,000, to reasonable limits, he has been defeated by the political pressure of Congress. Many years ago, President Cleveland determined to weed out the incompetent and sinecures from the federal service. He began with the Treasury Department, and his Secretary of the Treasury, John G. Carlisle, reported that there were numerous clerks, who did not have any substantial work to do—at least such as would justify their retention on the government payrolls. An order was given to dismiss these useless employees, and when it became known, the halls of Congress were almost deserted, as Senators and Representatives thronged the White House and insisted upon a revocation of the order. While President Cleveland was generally unflinching in his determination to pursue the course that he thought right, yet the pressure was so great that he was compelled to yield to it and revoke the order.

This situation could be easily paralleled today in most of the departments of government, but if President Hoover, in the exercise of his undoubted power and in relief of the American taxpayer, removed from the public rolls the many thousands of employees, who have little or nothing to do to justify their employment, he would at once imperil the success of his administration by provoking a quarrel with Congress, which, with all its professions of economy, is indisposed to approve such removals. Some day a President will gain immortality by the simple expedient of cutting down the federal payroll to reasonable limits, but until that time comes, the great principle of the Circumlocution Office—"How not to do it"—will be the accepted practice of our government.

## CHAPTER X

### GOVERNMENT-OWNED CORPORATIONS

"I see you're admiring my little box," the Knight said in a friendly tone. "It's my own invention—to keep clothes and sandwiches in. You see I carry it upside down, so that the rain ca'n't get in."

"But the things can get out," Alice gently remarked. "Do you know the lid's open?"

"I didn't know it," the Knight said, a shade of vexation passing over his face. "Then all the things must have fallen out! And the box is no use without them." He unfastened it as he spoke, and was just going to throw it into the bushes, when a sudden thought seemed to strike him, and he hung it carefully on a tree. "Can you guess why I did that?" he said to Alice.—ALICE IN WONDERLAND.

No governmental device has been as mischievous as the unnecessary expedient of incorporating some special function of the government into a business corporation, chartered under state laws. It has dissipated responsibility, and permitted employees of the United States under the mask of a state charter to avoid all reasonable administrative regulations, and impose upon the taxpayer an intolerable burden of extravagant expenditures, often increased by gross corruption.

These government-owned corporations grew like mushrooms during the World War. Chief Justice Marshall long ago criticized similar iniquitous subterfuges. He said:

"It is, we think, a sound principle, that when a government becomes a partner in any trading company, it divests itself, so far as concerns the transactions of that company, of its sovereign character, and takes that of a private citizen. Instead of communicating to the company its privileges and prerogatives, it descends to a level with those with whom it associates itself, and takes the character which belongs to its associates and to the business which is to be transacted. As a member of a corporation a government

never exercises its sovereignty. It acts merely as a corporator, and exercises no other power in the management of the affairs of the corporation, than are expressly given by the incorporating act." *Bank of United States v. Planters Bank of Georgia* (1824), 9 Wheaton, 904.

Marshall's warning has long since been ignored. Government corporations flourish, for they are the ready shield of extravagance and corruption. The Parable of the Ten Talents teaches the fact that a man does not place his money in the possession of agents without exacting an accounting of their stewardship and, as already pointed out, the Continental Congresses learned to their sorrow and almost to the total destruction of all hope of independence that public moneys could not be entrusted to agents without also exacting an accounting.

Our nation is increasingly violating this principle by turning over vast sums of public money to government corporations with no substantial requirement that they render an accounting of their stewardship. The process is simple but the ultimate result is disastrous. The Supreme Court of the United States in *United States v. Strang*, 254 U. S. 491, said that even though Government owned all the stock the

"corporation was controlled and managed by its own officers, and appointed its own servants and agents, who became directly responsible to it. Notwithstanding all of its stock was owned by the United States, it must be regarded as a separate entity."

The United States has organized subsidiary corporations for the conduct of certain functions and, as stated in the *Strang case* in effect, the bureaucracy has thus escaped control by the Chief Executive and of statutes, enacted from time to time during the course of our national existence to secure greater honesty, economy, and efficiency in the expenditure of public funds.

The first corporation created by the United States was the Bank of North America, and it was for a time largely owned by the Government. The plan had been suggested in a letter from Alexander Hamilton to Robert Morris, then Superintendent of Finance under the Articles of Confederation. Morris presented the scheme to Congress on May 17, 1781, the incorporating act was passed on December 31, 1781, and active operations began in Philadelphia on January 7, 1782, with six regular employees. This bank was organized after considerable opposition, due to the fact that the continental currency had depreciated to such an extent that Congress was unable to buy food for the Army and it required the personal appeal of Washington to prevent the troops from deserting in a body. It was thought by both Hamilton and Morris, as well as by seven of the thirteen states voting on the measure, that some relief could thus be secured from the state of bankruptcy which then confronted the Government.

While the directors were seeking subscriptions to the stock, Morris received a shipment of \$470,000 in specie from France and he deposited the money in the bank. Morris pledged more than half the sum for 633 shares of stock, which was approximately five-eighths of the total stock issued by the bank. This was a profitable arrangement for the Government because the dividends on the stock more than paid the interest on the sums borrowed by the Continental government from the bank. However, other investors objected to the arrangement and Morris finally sold the Government stock and repaid the loans to the bank.

A few years later, Hamilton as Secretary of the Treasury urged the establishment of the Bank of the United States and the bill creating it was signed by Washington on February 25, 1791, with many misgivings as to the constitutional power of Congress to enact such a law. It required the ingenious opinion of Hamilton, first stating the doctrine of implied powers of Congress under the Constitution, to convince Washington that the act was constitutional. The opinion is a masterpiece and is the chief source of many of the notable opinions of Chief Justice Marshall,

which firmly established the implied powers of Congress under the Constitution. Thus began the process of converting a government of limited into one of almost unlimited powers. The incorporation of the Bank undoubtedly had an economic justification but no one believed that the expedient would be resorted to for other purposes.

The United States did not again vest its powers in business corporations until shortly after the Treaty of February 26, 1904, between the United States and the Republic of Panama for the construction of a canal across the Isthmus of Panama. A part of the property, which the United States purchased from the French Company, was the Panama Railroad Company, organized on April 7, 1849, as a private corporation under the laws of the State of New York for the purpose of operating a railroad across the Isthmus. This railroad was opened on January 28, 1855, and had continued in operation until the United States secured title to all of its stock in connection with the construction of the Panama Canal. It has since been operated by the War Department as a corporation owned by the United States and the Secretary of War reported that it earned net profits of \$991,383.72 for the fiscal year 1931, as compared with \$1,523,874.82 for the preceding fiscal year. This Panama Canal Railroad owns and operates a fleet of steamships. As Congressman Will R. Wood said on the floor of the House of Representatives on January 5, 1932, these vessels

"... are engaged constantly in mercantile business, in addition to the business they are set up and created for. Ours, as I have said, is the only nation on the face of the earth that has such a transport business. What do they do? They are in competition with the merchant marine of the United States, which is struggling day by day for its very existence."

He might have added that another department of the Government, the Post Office Department, was at the same time paying large sums of public money to private ship-

ping interests for carrying the mail and that the Shipping Board was also paying these private lines further large sums as charter hire, or under lump-sum agreements for each voyage made, presumably to enable the private lines on these particular routes to compete with the Panama Steamship Company.

There were no other business corporations owned by the United States until after the act of September 7, 1916, 39 Stat. 728, 738, when Congress provided for the organization of the United States Shipping Board to foster our merchant marine. It was authorized to form a corporation under the laws of the District of Columbia with a capital of fifty million dollars to be paid by the United States. The Board was appointed by the President and duly confirmed by the Senate in January, 1917, but no steps were taken to organize a corporation until April 16, 1917, when the United States Shipping Board Emergency, now Merchant Fleet Corporation, was organized, with the authorized maximum capital of fifty million dollars. The President on February 5, 1917, issued a proclamation, declaring a national emergency to exist, thereby conferring on the board all the emergency powers provided for in the act creating the Board. These powers were further enlarged when the President on July 11, 1917, transferred to the Board the sweeping powers delegated to him by the Emergency Shipping Act of June 15, 1917, 40 Stat. 182. Congress actually appropriated \$2,625,451,000 for construction purposes alone, or more than seven times the cost of the Panama Canal. The losses of this corporation were stupendous, ranging from \$92,859,769.08 for 1921, to \$86,100,165.07 for 1922. They continue to this day, and aggregated \$22,272,705.82 for the fiscal year 1930. The President of the United States selected an expert and highly capable advertising man from a midwestern city to be the chairman of the United States Shipping Board with its vast shipping interests controlled through the Fleet Corporation! It is not surprising that among other unprofitable experiments was an investment of \$300,000,000 in wooden ships, made from green timber, which made them unseaworthy.

The Comptroller General of the United States in a report dated September 30, 1929, to Congress (printed as House Document 111, 71st Congress, 1st Session), stated the results to that time of the sale of ships by the Fleet Corporation as follows:

Number of Vessels	Dead-weight Tonnage	Per Dead-weight Ton	Sales Price per Vessel	Total Amount of Sale	Actual Cash Received to Date	Construction Costs
6	.....	.....	\$46,970.00	\$281,820.00	\$82,671.00	\$10,488,490.48
1	.....	.....	100,000.00	100,000.00	100,000.00	532,890.58
2	15,321.00	22.50	.....	344,722.50	310,250.25	3,215,050.49
5	.....	.....	1,125,000.00	5,625,000.00	2,437,500.00	32,477,998.92
18	141,288.00	7.50	.....	1,062,022.50	500,059.02	29,452,879.46
2	18,259.00	7.50	.....	95,323.00	25,521.47	3,905,162.82
4	.....	.....	1,026,000.00	4,104,000.00	1,579,800.00	24,899,056.98
6	.....	.....	49,250.92	295,515.50	118,206.17	13,132,598.40
2	.....	.....	33,500.00	61,090.00	11,800.00	2,094,903.76
11	.....	.....	96,855.00	1,065,000.00	26,625.00	20,735,832.33
7	.....	.....	99,558.00	696,906.00	174,226.50	13,893,121.36
21	.....	.....	94,355.00	1,981,755.50	495,438.83	39,302,567.24
5	37,500.00	225.00	.....	8,437,500.00	298,823.50	8,204,825.00
7	84,000.00	200.00	.....	16,800,000.00	6,780,000.00	16,800,000.00
2	21,933.57	7.00	.....	381,753.00	381,753.00	5,632,814.48
199	.....	.....	8,530.00	1,697,470.00	1,697,470.00	166,500,000.00
7	.....	.....	42,500.00	297,500.00	297,500.00	2,507,988.38
6	46,995.00	5.75	45,000.00	.....	67,500.00	.....
10	78,310.00	3.00	23,475.00	234,930.00	* 28,674.75	16,286,717.60
321	.....	.....	.....	43,962,308.00	15,413,919.54	408,062,898.58

The Comptroller General further stated in this report, among other things, that:

"During the fiscal year 1923 securities, consisting of ship notes, certificates of indebtedness, mortgages on real estate, and liberty loan bonds, aggregating a recorded indebtedness of \$28,732,188.92, were sold for \$8,128,948.62, part of which consideration was represented by notes secured by stock or doubtful collateral. In many instances debtors were allowed to purchase their own obligations for comparatively nominal amounts, and in certain cases sales of securities were made without advertising or competitive bidding. A debtor, whose indebtedness was over a million and a half dollars, was allowed to purchase his own notes, indirectly, for \$128,750. Notes of a company, amounting to over \$6,500,000, were sold to the president of the company

for \$908,775, of which \$608,000 was in cash and the balance in notes secured by stock in the company, which stock later became worthless. Notes were sold to a company for \$777,980, representing an indebtedness of its subsidiaries of over \$5,500,000."

This is only a partial history of this wasteful and bureaucratic activity, of which Congressman Will R. Wood said in the House of Representatives:

"There is another activity to which I wish to call attention, that has been an eyesore to this Government ever since it was created and will be as long as it is continued. I refer to the Shipping Board. The Shipping Board should be abolished or its functions should be reduced to the purpose, for which it was primarily instituted, that is, for insurance, etc., a sort of regulatory board. Its transactions, as far as operating ships is concerned, have been the most expensive matter ever fastened upon this Government, and everyone who has inquired into it knows that what I say is true. It is without any efficiency. Let us consider for just a moment the manner of selecting its directors. Under the law they are to be selected by zones; one from this zone, one from that zone, and one from the other zone—five in number. In consequence, nine times out of ten, it is impossible to find in a particular zone a man who will accept the position, who is fit for the place. There has been constant turmoil and dissension among the members of the Shipping Board ever since it was created. If any banking institution of this country had been conducted as the business of the Shipping Board has been conducted it would go to the wall in six months."

Boards for the conduct of executive business were a failure under the articles of Confederation prior to 1789,

and the First Congress organized under the Constitution resolutely refused to entrust executive business to boards. The operation and conduct of the Shipping Board vindicates their statesmanship.

The next corporation created by the United States was not pursuant to statutory authority. It was created in accordance with an executive order of August 14, 1917, and was organized under the laws of the State of Delaware. At first, its corporate name was the Food Administration Grain Corporation with a capitalization of \$50,000,000, increased on June 21, 1918, to \$150,000,000. At one period it had borrowed \$385,000,000. The corporation was reorganized shortly after June 30, 1919, as the United States Grain Corporation and its capital stock increased to \$500,000,000 from an emergency appropriation made by Congress on March 4, 1919, for the purpose of maintaining the price which the President had guaranteed in a proclamation of September 2, 1918, for the 1919 crop of wheat. This corporation earned a paper profit of approximately \$24,000,000 from August, 1917, to July, 1919, and \$43,725,000 from the latter date to June 1, 1920, principally through the sale of wheat on credit to a hungry Europe.

The War Finance Corporation was the third great corporation created by the United States as the result of the World War. It was created by the act of April 5, 1918, to permit essential industries to borrow needed funds. The act fixed the capital of the corporation at \$500,000,000, with the Secretary of the Treasury and four other persons, to be appointed by the President with the advice and consent of the Senate, as the board of directors. This corporation differed from its predecessors not only in the method of organization but in its purposes. It was designed to furnish a type of credit, for which neither the Federal Reserve Banks nor the Federal Land Banks were created; that is, long-term credit needed by industrial enterprises or the intermediate credit needed by agricultural marketing associations. The life of this corporation was extended in January, 1921, over the veto of the President and the act was amended on August 24, 1921, to

permit financing of dealers in agricultural products as well as exporters. It appears that on December 31, 1931, all of the capital stock of the War Finance Corporation, except a small amount, had been canceled and the corporation had \$114,347.14 in cash in the Treasury; \$222,358.25 outstanding and not collected principal, and \$6,474.83 uncollected interest. Assuming the accuracy of its book-keeping, the corporation paid the United States a net profit of \$64,531,271.70.

The Agricultural Credits Act of 1923, created twelve intermediate credit banks to furnish permanently the intermediate type of agricultural credit, which the War Finance Corporation had furnished temporarily. These agricultural credit banks are government-owned institutions and differ to a great extent from the Federal Land Banks, organized in 1917 and supervised by the Federal Farm Loan Board in the Treasury Department. They were created to make long-term loans.

The shipbuilding program of the Emergency Fleet Corporation, with the sudden expansion of munitions and other manufacturing plants, led to a shortage in housing in the vicinity of these works and Congress appropriated \$100,000,000 to enable the President to relieve the situation. The President delegated his powers to the Department of Labor, which had not a vestige of a construction organization. The Labor Department, not to be outdone by the Treasury Department and the Food Administration, organized the United States Housing Corporations under the laws of the State of New York and the State of Pennsylvania. There had been previously organized in the Department of Labor a Bureau of Industrial Housing and the officers of that bureau became the officers of the new corporations. As funds did not become available until the act of July 25, 1918, this corporation launched into a great construction program of houses approximately three and one-half months before the close of hostilities in Europe, and entered into sixty construction enterprises. Twenty-eight of the projects were finally completed, with some 5,995 houses and apartments, 64 dormitories, 57 garages, a ferry, several schools, recrea-

tion halls, cafeterias and hotels. When Congress directed by an act of July 19, 1919, that the corporations sell the property, a board of appraisal fixed a market value of from 52 to 73 per centum of the cost. The assets of these corporations have not been fully liquidated. Needless to say, the United States has sustained large losses in this paternalistic business adventure. Its only possible justification lies in the exigencies of the World War.

The Sugar Equalization Board was incorporated on July 31, 1918, under the laws of Delaware, with a capital stock of \$5,000,000, furnished by the United States out of a fund of \$50,000,000, previously appropriated by Congress in aid of the national security and defense. This corporation attempted to establish a basic price for sugar at all refining points in spite of the difference in production costs. It purchased outright the Cuban crop of 1918-1919, and controlled the home sugar crop through a licensing system. Even the size of the package in which sugar could be sold was prescribed. Thanks to its monopolistic control over sugar and correspondingly high prices, it was able on July 15, 1926, to return to the Federal treasury its capital of \$5,000,000 and a surplus of \$6,370,621.39,—an indirect tax upon the consumers and comparable to the profits derived from salt, once a Government monopoly in France.

At about the same time, Congress provided in the act of July 9, 1918, for the creation, under the laws of the District of Columbia or of any of the States, a corporation for the production of spruce lumber needed in the manufacture of aircraft and to carry on under corporate control the production of such lumber, which had commenced in the autumn of 1917. The Spruce Production Corporation was organized on August 20, 1918, under the laws of the State of Washington, with a capital of \$10,000,000, all subscribed by the United States. The property of the Government, consisting of spruce lands, machinery, etc., was not transferred to this corporation until October 11, 1918, though some of the details were not completed until November 1, 1918, and ten days later the Armistice was signed, at which time the corporation

was possessed of some \$24,000,000 worth of property. I repeat that with all of the vast expenditures for airplane lumber, engines, and other parts, few, if any, American built airplanes winged their way against the allied foes.

The Russian Bureau, Inc., was the last of these war corporations, created under the laws of the State of Connecticut with a capital of \$5,000,000, subscribed by the United States for the primary purpose of shipping vitally needed supplies to those parts of Russia in which the Czechoslovakian troops were operating. Its activities centered chiefly in Siberia. This corporation ceased business with the close of the war.

The Inland Waterways Corporation was created by the act of June 3, 1924, 43 Stat. 360, 363, to take over and operate certain boats and barge lines on the Mississippi River. The net assets transferred from the United States to this corporation aggregated \$11,172,922.44 of equipment and \$785,360.40, due on loans and current accounts. The plan to incorporate this service is said to have originated in the War Department and the act of incorporation authorized a capital of \$5,000,000, to be subscribed by the United States, and this has been since increased to \$15,000,000. The Secretary of War reported January 14, 1932, that in only three years did it make a profit and that the total loss since 1921 is \$2,708,556.30.

The Secretary of War further reported for the fiscal year 1931 that this corporation now has a fleet of 359 vessels, built or building, and that there has been a steady increase in water borne commerce—of course, at the expense of the taxpayers throughout the United States for supplying the corporation with capital and sustaining the losses. It has done a great injury to the existing rail carriers and is one of the minor causes, why the United States is today pouring millions into the railroads through the Reconstruction Finance Corporation to save them from bankruptcy. Yet this Government-owned corporation pays not a cent of taxes, while the Interstate Commerce Commission has reported that if the present tax of an average of \$1,591 per mile could be reduced to the Canadian tax of \$267 a mile on the railroads they could

transport free all grain, flour, mail, and livestock and yet have \$403,000,000 more revenue than they actually received for the period from 1923 to 1927.

The Spruce Production Corporation, Housing Corporation, Merchant Fleet Corporation and the Inland Waterways Corporation were deliberately created to take over and operate under corporate form certain non-governmental or private business functions, conferred by law on administrative officials in the executive branch of the Government, while the Grain Corporation, Sugar Equalization Board, Inc., and Russian Bureau, Inc., were formed for the purpose of discharging functions of the Food Administration. The Federal Farm Banks, Intermediate Credit Banks and the War Finance Corporation were created for the performance of banking functions. Much of this work could have been carried out more economically and efficiently by existing governmental institutions.

Climaxing all of these corporations are the subsidiaries organized with government loans by the Federal Farm Board. This Board was given sweeping authority to spend \$500,000,000 upon the mere voucher of the Chairman, an amount equal to one-half of the war indemnity imposed by Bismarck upon France in 1871. The statutes of the United States will be searched in vain for any such almost unlimited delegation of power as Congress vested in the Farm Board, but the Board, not content with such delegation, organized two subsidiary corporations. This Board had printed at Government expense during the fiscal year 1930, 924,620 copies of its publications to vaunt its alleged services to agriculture. The Farm Board is clearly the most costly and inexcusable legislative folly in our history. It was imposed upon the American people by the Farm Lobby, and some of its shady promoters enriched themselves with salaries, commissions, and perquisites as officials of these subsidiary co-operative associations, which may prove to be one of the great scandals of this generation.

Tried by the arduous test of experience, this essay in socialism has failed. The Farm Board sought to minimize

speculation but through its subsidiaries has become the greatest speculator in grain and cotton; it sought to stabilize prices and it drove them downward until they fell below the cost of production; it sought to prevent a surplus and only increased the surplus; it sought to decrease the planting acreage and only increased it; it sought to secure orderly marketing and, with the government as the biggest speculator in wheat and cotton with unlimited means, the orderly marketing became disorderly past precedent. It sought to prevent depression in agriculture and it has contributed to the greatest depression in our history; it sought to prevent wasteful methods of distribution and only succeeded in imposing upon the people of the United States nearly one-fourth of the present governmental deficit.

The effect upon our foreign markets can be measured by a single fact that, whereas the sale of American cotton has shrunk from 15,053,000 bales in the season of 1928-29 to 10,907,000 bales in 1930-31, yet the sales of foreign-grown cotton have increased from 10,800,000 bales in 1928-29 to 11,575,000 bales in 1930-31. In other words, partly due to the pernicious effect of the Farm Board's operations upon the marketing of cotton, America has lost over 4,000,000 bales as compared with the gain of foreign growers of 775,000 bales.

This effect upon our foreign markets was not merely natural, but inevitable. When our government, with its great resources, proposed to stabilize the price of wheat and cotton (meaning thereby to raise the price artificially), foreign nations, which had previously purchased American wheat and cotton, at once began extensive efforts, either to raise these products themselves, or buy them elsewhere and they substantially lessened the importation of these American products by higher tariff barriers. Thus, some of our trade was cut off from the rest of the world and the domestic surplus necessarily increased. This drop in exports of wheat amounted to 300,000,000 bushels in one year, or 34 per cent. As for stabilizing the price, it is said that wheat sold in Liverpool a year ago at the lowest price in seven hundred years and

certainly in America the price has been as low as any time in a century.

The Farm Board and its subsidiary corporations seek to educate, persuade and at times coerce the farmer as to how he shall dispose of his product. When the farmer relies, through his co-operatives, upon the natural law of supply and demand, the government disturbs the inexorable working of that law by going into the market and buying huge quantities of farm products. It loads up the available storage houses of such products until too few are left for the incoming crops of another year, at a daily loss to the government for unnecessary warehousing of \$175,000. It holds over the market these vast supplies, so that neither the producer nor the commission man can buy or sell without fear that the wholesome law of supply and demand will be temporarily disturbed by the government unloading its surplus. In the mad rush to placate the farm vote, Congress became sadly muddled, for the Grain Futures Act of 1921 was based upon the theory that the grain markets were controlled and manipulated by artificial means and the Exchanges were therefore required, under orders of the Secretary of Agriculture, to adopt rules to prevent such manipulation. Now Congress largely nullifies this prior law by enabling the Farm Board to control and manipulate the prices of wheat. The unhappy commission man, therefore, is subject to cross-fires. On the one hand the Department of Agriculture pursues an intensive campaign of espionage to prevent manipulation and, on the other hand, the Farm Board attempts to create a gigantic monopoly in wheat to manipulate prices. In other words, what the 1921 act makes illegal for the commission man is made legal in the act of 1929 for the Farm Board.\*

Even if such extraordinary power to organize, own and operate business corporations can find any justification in the Constitution, it may be doubted whether its framers

\* Such folly is only equalled by the action of Congress in turning loose on the American people a little army of prohibition agents. The efficiency of this governmental bureau in cheapening the manhood of the American people can be measured by the fact that since the Eighteenth Amendment was adopted, over 600,000 American men, women and even children, have been indicted or convicted.

ever intended that Congress and the President could delegate such powers to officers and employees of the United States to be exercised under the cloak of a corporation.

This greatest failure in the history of our government will not be wholly in vain if it teaches the American people the simple and obvious truth that even the opulent purse of Uncle Sam cannot stabilize the price of a world staple. Ben Franklin once said that "experience is a dear school, but fools will learn in no other," and as the American people are not fools—although often misled by designing politicians—they must now realize that no government, however powerful, can overrule the law of supply and demand in a world market. It should not have required the expenditure of \$500,000,000 to teach us this obvious lesson. It could have been learned for a few dollars in any elementary book on economics. When we lightly entered upon this stupendous experiment in state socialism, we had had the experience of Japan with silk, of Cuba with sugar, of Brazil with coffee, of England with rubber and of Canada with wheat, but our Congress ignored these warnings. Like "Ole Man River," this law of supply and demand may not "plant 'taters or cotton" but it just "keeps a-rolling along" and any attempt to confine it within the limits of an artificial policy simply results in the overflow of the mighty river to the destruction of the surrounding banks. The growers of wheat and cotton are beginning to appreciate this elementary truth.

This stupendous failure would be comical, if it were not so tragical. It suggests an incident that took place about a century ago. In October, 1831, Sydney Smith rose in the House of Commons and, referring to a similar attempt of government to interfere with an irresistible trend, used an illustration, which has ever since roused the gaiety of nations. It was the story of Mrs. Partington, stout and vigorous housewife in an English seacoast town, who, when a fierce Atlantic storm swept the shores and invaded her house, vigorously took broom and bucket and tried to mop up the Atlantic Ocean. She had been very successful in puddles in her kitchen, but, as Sydney Smith said, she should not have meddled with the Atlantic Ocean. Her

attempt, however "noble in motive," was misguided, for no mortal hand can stabilize the waves of the sea. As little can any nation stabilize the ocean-like waves of wheat and cotton.

The 71st Congress vainly believed that Uncle Sam could succeed where Mrs. Partington had failed and it proceeded at a stupendous expenditure of the public monies to mop up the inflowing tide of grain and cotton, which had been produced by our farmers in excess of any possible consumption. The world now knows the result and the Farm Board confessed its abject failure when it announced that it would not repeat the experiment this year.

To find a fitting parallel it would be necessary to go back to Egypt when a Pharaoh with absolute power constituted Joseph a Farm Board to buy up all surplus wheat.

"And Pharaoh said unto Joseph . . . there is none so discreet and wise as thou art.

"Thou shalt be over my house, and according unto thy word shall all my people be ruled; only in the throne will I be greater than thou.

And Joseph gathered corn as the sand of the sea, very much, until he left numbering; for it was without number."

There is, however, an important distinction between the two cases, for the ancient Pharaoh vested this power in Joseph to meet the emergency of a coming famine and for the benefit of all the people, whereas the operations of the Farm Board were intended, in a time of surplus to relieve the farmers of one section of the country from the consequences of their own mistake in growing more wheat and cotton than the world would consume. Moreover, the event proved that Joseph was a "discreet and wise" purchaser of wheat. If the Farm Board has any such ability, it has hitherto successfully disguised the fact.

Undoubtedly, the culminating folly of this ever-growing system of bureaucracy is the Farm Board, with its almost unlimited power to spend \$500,000,000 in aid of the American farmer. It represents bureaucracy in its

most indefensible form. Acting as banker, it loans at nominal rates of interest to farmer co-operatives to enable them to compete with the established marketing agencies of the country, which have been built up with infinite efforts for over eighty years. The outstanding loans from the revolving fund, as of July 1, 1931, amounted to over \$345,000,000, and the average interest rate is less than 3 per cent. This is practically a gift of government credit for private benefit.

It was well said by the present President of the United States, when he was Secretary of Commerce:

"It is this intrusion of the government into trading operations on a vast scale that raises a host of new dangers, the untenable aftermath of any such efforts by political agencies to interfere with the normal processes of supply and demand. Building up resistance is not a pleasant job because it is necessarily subject to misrepresentation, but to say that our people must tamely submit is intolerable."

Even more pointedly Mr. Hoover, when President, in his Farm Relief message to Congress said:

"No governmental agency should engage in the buying and selling and price-fixing of products, for such courses can lead only to bureaucracy and domination. Government funds should not be loaned or facilities duplicated where other services of credit and facilities are available at reasonable rates."

The Farm Relief Law, from beginning to end, is a negation of these wise statements of an American policy.

The golden words of President Hoover were an echo of his great predecessor, Calvin Coolidge, who said in reference to this very legislation:

"Government price-fixing once started has alike no justice and no end. It is an economic

folly from which this country has every right to be spared."

The United States was not spared the fatal experiment, which as a precedent will plague us for generations to come.

What is every man's business—to preserve the original form of a beneficent government—becomes no one's business, when considerations of political expediency move representatives in Congress to placate some element in the electorate. Thus, when the Agricultural Relief Bill came up in the House of Representatives, only 50 of the 435 members refused to vote for it. Of the faithful fifty, the author of this book was one.

As the cuttle-fish disguises its flight by exuding an inky fluid, so these forms of bureaucracy, in constant fear of a day of reckoning, create these corporate subsidiaries to make governmental supervision more difficult.

The burden to the taxpayer of these costly experiments in State socialism is stupendous, and yet seems to be little realized by the American people. Thus, the Farm Board has cost the American people almost \$500,000,000. The taxpayer reads this figure in cold print, but apparently it makes little or no impression upon him. This may be due to the fact that he pays his taxes without any specific application of them to any governmental purpose, and the Treasury, having thus taken from the productive wealth of the country over four billions of dollars each year, simply gives these socialistic undertakings a credit on the books of the treasury for the amount appropriated.

How differently the taxpayer might view the matter if the amount of these appropriations were paid in gold bullion and he could see the physical transfer from the vaults of the treasury to its ultimate destination. For example, if a taxpayer saw a long line of carts at the doors of the treasury, and perceived the actual loading of gold bullion, and then traced its physical transfer through the Farm Board and its subsidiary corporations to its ultimate beneficiaries, he would be in revolt, unless he had lost wholly the power of resistance. His indignation would be in-

creased if he were one of the 16,000 taxpayers who, in the fiscal year of 1928, contributed 60% of the income taxes of the country, for he would then realize that he was one of the few, whose money was being diverted from the industrial States for the supposed benefit of the Western and Southern farmers, who contributed little or nothing to this stupendous amount.

The founders of this Republic waged a seven-year war in protest against a two-penny tax on a pound of tea, because it involved a principle. The Americans of this generation are apathetic when literally billions of dollars are taken from the public treasury for the benefit of special classes or sections, because they have either lost appreciation of the principle involved, or are too indolent to fight for these principles.

Except for the need of coming to Congress for appropriations, when their revolving funds or capital have been exhausted, the bureaucracies in charge of the corporations are as free in operations as privately owned corporations. They are even more free unless there is some specific statute applicable. The Supreme Court of the United States held in *United States v. Strang*, 254 U. S., 492, that the criminal statutes applicable to officers of the United States were not applicable to the employees of a Government-owned corporation. These Government-owned corporations do not pay taxes, municipal, state and national, and the inevitable deficits are charged to the American taxpayers. Many of the operating officers and employees take so little interest in the prosperity of the corporations that the latter would soon have found themselves in bankruptcy courts, had it not been that Congress has good-naturedly opened the doors of the public Treasury to further appropriations to these so-called "revolving funds." They revolve in a vicious circle of growing cost.

Congress should refuse future requests of administrative officers, for the creation of corporations to conduct some phase of the public business, unless the business is of that unusual character that it cannot be conducted by some of the existing departments of the federal government. Even then safeguards should be placed in the statute, creating

the corporation, so that there may be control by law of the large expenditures of the parent company and its subsidiaries. No statute should be enacted by Congress for spending public moneys without a reservation in the law that all expenditures shall be supervised by the Comptroller General and those disallowed, which do not comply with the law.

## CHAPTER XI

### BUREAUCRACY AND INDIVIDUALISM

"Perhaps, in general, it would be better if Government meddled no farther with trade than to protect it, and let it take its course. Most of the statutes, or acts, edicts, and placards of Parliaments, princes and states for regulating and directing of trade, have, we think, been either political blunders or jobs obtained by artful men for private advantage under pretense of public good."—BENJAMIN FRANKLIN in *Principles of Trade*.

LET us now consider the efforts of our federal bureaucracy to investigate and regulate private business. It offers to business much unsolicited and at times unwelcome advice.

The last chapter discussed government-owned corporations, conducting business operations in competition with the taxpayers of the country, and showed that these invasions of the sphere of private business were generally, though not always, accompanied with huge losses paid by the taxpayers in addition to the losses sustained by private business in this unfair competition. This can be supplemented by some consideration of the business activities, which the administrative branches of the Government carry on at the expense of the taxpayers and in direct competition with them.

Probably the War Department conducts the greatest of such activities in its river and harbor work. Congress provided in 1883 that the Secretary of War should perform this work by contract or otherwise, as might be most economical and advantageous to the Government. The "or otherwise" meant that he could dispense with advertising for bids and letting of contracts when in his discretion he believed that it was more economical or advantageous to purchase a Government plant and do the work. Neither the Secretary of War nor his assistant secretaries generally have sufficient practical knowledge to determine whether certain dredging in a particular river or harbor or whether a certain dam or levee should be constructed by government plant or by contract. In

1916, there was an ill-advised meeting of dredge owners to register a grievance against the unnatural competition, which reduced the contract price below the cost of performance and a fair margin of profit. These owners adopted a resolution, designed to relieve the situation by refusing to compete in certain territories of their competitors. A copy of that resolution came to the attention of a member of Congress, who secured an amendment to the rivers and harbors bill in 1916, providing that no money appropriated by that act should be used for contracts, unless the contract price was not in excess of 25 per centum of the estimated cost of doing the work by government plant and day labor. The amendment was carried in the succeeding appropriation act and finally made a permanent law in 1919.

The bureaucracy has interpreted these 1883 and 1919 statutes to mean that it may do rivers and harbor work by government plant and day labor, when the estimates of cost are less than the lowest bid received plus an estimated amount for government overhead. The statute permits the bureaucracy to contract for the work, when the cost is not more than 25 per centum in excess of the government estimate of doing the work with government plant. There is no legal requirement that the bureaucracy do so. The result is that bidders are under constant compulsion to bid as low as possible and since labor cost is the largest item in such work, the competitive basis maintained by the Government requires the contractors to pay as little as possible for wages. Labor organizations insist that a law be enacted to require the contractor to pay the prevailing rate of wages, whatever that may mean, instead of attacking the laws of 1883 and 1919, which brought about the condition.

The 1883 and 1919 acts exemplify the skill, with which bureaucracy plays the contractors against labor, emerging from the conflict with enlarged jurisdiction and powers. The Chief of Engineers of the Army, under whose immediate supervision such work is performed, is reported to have stated to a protesting body of contractors that when the engineers of the Army performed work

by government plant and hired labor, they were at liberty to disregard both the specifications and their estimates of cost. Under such procedure an ever larger amount of river and harbor work is being done by the United States and the taxpayers now have invested a large amount of money in plant and equipment. The Secretary of War in his Annual Report for the fiscal year 1931 omits the exact figures as to the cost of such equipment, but the cost has been estimated to be in the neighborhood of a million dollars. Whatever else may be said of this system, there are few more efficient and useful bureaus than the Chief of Engineers of the Army.

Both the War and Navy Departments are engaged in competition with private business in operating transports, arsenals and navy yards for the manufacture of guns and ammunition. For this there is some justification, as in the supreme matter of defense in the event of war it is not desirable that the Nation should be wholly dependent upon private enterprise. Nevertheless, at the first sign of war it is necessary to procure the greater part of such equipment from private concerns, which are required almost overnight to increase their plants at enormous expense, and this is either passed on to the Government or absorbed by the stockholders of such concerns and in any event operates as an economic loss. Moreover, the United States is now building in its navy yards approximately half the new vessels authorized for the Navy and private shipyards, submitting bids as low or lower than the estimated cost of doing the work in navy yards, are lying idle for want of work.

Naturally all this adds to the cost of other vessels constructed in private shipyards and Congress votes a compensatory subsidy, in the form of mail pay or by direct grants of the Shipping Board to the operators of American merchant vessels constructed in American shipyards, the argument being that the cost of such construction is so much higher than in European shipyards that the subsidies are necessary to maintain the American flag on the seas. It is interesting to note that we had no such policy in the early days of our Government and that prior

to the Civil War the American flag was flown at the masts of our merchantmen in all the principal ports of the world. At that time, too, we did not have a Federal law, regulating all phases of the relationship between masters and seamen of our merchant vessels, and making it difficult for the American merchant marine to compete with foreign-owned vessels.

Some of our theoretical writers have contended that the decline in American shipping was incident to our growth westward, with our increased interest in railroad and other interior developments, but this ignores the growth and activity of United States navy yards and the meddling of Government in the private industry of ship-building and ocean transportation.

Notwithstanding there are thousands of contractors in this country able and willing to compete for public construction work, the War Department bureaucracy constructed at the West Point Military Academy—possibly as an object lesson to the cadets who are there in training to become future officers in the Army—a large and expensive building under the supervision of an Army Quartermaster with hired labor. At the time this was being done, it was contended by some labor trades that the wages paid by the Government to its mechanics and laborers were less than the prevailing rate of wages in that locality, Congress having previously provided that all contractors pay the prevailing rate of wages, whatever that phrase may mean. Is legislation morally sound, which requires the payment of the prevailing rate of wages, to be determined in event of dispute by the Secretary of Labor, with no statement in the advertised specifications as to what were the prevailing rate of wages at the time of advertisement and with no provision for readjustment of the contract price, as the rate of wages the contractor may be required to pay are adjusted by the bureaucracy?

The Secretary of the Interior may conclude to erect a new school house on an Indian reservation or construct an irrigation ditch across a reservation and he is confronted by a statute, which directs that he utilize Indian labor wherever possible. It is possible to use such labor

in erecting the school house or in digging the ditch, but to do so means a much larger expense to the Federal Government because of the known inefficiency of such labor. If contractors are required to use such labor, their bid prices are necessarily high and so the Government frequently attempts the construction on Indian reservations with a few employees to supervise the work and a large number of Indians to do the work. The extra cost in any event is placed on the backs of the American taxpayers.

The Federal Government invaded the printing industry in 1861, through the purchase of a building and equipment for \$135,000. In 1931, this small plant had grown into an establishment which cost \$5,000,000 for the building, with machinery and equipment, etc., valued by the Public Printer in his 1931 Annual Report at \$5,910,000. In 1861, that plant had 350 employees and in 1931 it had 4,936 employees, while the wages for printers and pressmen had grown from \$14 to \$55 a week. As previously stated, the cost of authors' alterations in government printing in 1931 was \$240,398.69 or more than the entire cost of the Government printing office in 1861.

The Alaska Railroad was constructed some years ago and is under the general supervision of the Secretary of the Interior, who reported that this government-owned railroad had been running behind one million dollars a year, until a Senate committee made an investigation and recommended certain changes, which operated to reduce the deficit to \$589,750 for the fiscal year 1931.

Notwithstanding the fact that American ingenuity and intelligence have developed this country into the most powerful of nations and that wherever the Federal Government as such has attempted to engage in private business, whether directly or through government-owned corporations, such attempts have generally resulted in costly failures, the War and Navy Departments propose that in event of war private business establishments shall be practically taken from the control of their owners and operated under the supervision of military men, whose training and experience certainly justify no hope that they will equal the seasoned and capable men, who know and have

made a success of their business. It is stated in the 1931 *Annual Report of the Secretary of War*, pp. 60, 61, that:

"Our broad plans for industrial mobilization take cognizance of the genius of American Government and the popular concept of the responsibilities and duties devolving upon the Executive branch in time of war. They have been developed on the following basic considerations:

- "(a) Control of industry in war is a function of the President, acting under the authority accorded him by the Constitution, by Congress, and by public opinion.
- "(b) The size, and the special and emergency nature of the task of co-ordinating American industrial effort, demand a special organization, to be made available to the President promptly upon the outbreak of war.
- "(c) Plans must be practical rather than theoretical. In the interests of national morale they must operate justly and distribute war's burdens as equitably as practicable. They should not contemplate the imposition upon our people of unaccustomed economic processes.
- "(d) Emergency measures become effective primarily through the support of public opinion. Justice and fairness, supplemented by strong and intelligent leadership, will be more effective than arbitrary regulations, no matter by whom promulgated.

"There are being developed plans for setting up the administrative machinery necessary in war. In the hands of a war-time President there are invariably placed, by the Constitution, by Congress, and by public opinion, a vast responsi-

bility and a corresponding authority. His personal leadership must make itself felt forcibly and instantaneously from the seat of government in Washington to the remotest hamlet of the country. A smooth-working organization, specially designed for the unusual and emergency tasks that will develop, is essential. Aside from the fact that in the World War every government found it necessary to set up a special administrative headquarters, through which the Chief Executive could exercise his special war functions, it is evident that the existing cabinet departments are not adaptable to the performance of these duties."

The experience of the nation in the World War does not support these recommendations. Unprecedented powers were unwisely given to the President and the result was gross inefficiency, waste, and delay. Over \$25,000,000,000 were spent with no adequate results. It was an era of extraordinary ineptitude and folly. It ought to be obvious that the manufacturers, who have devoted years to their business, are far better qualified to conduct such business in times of war or peace than the bureaucracy, whether military or civilian, and that what is in fact needed are well developed plans and specifications for war material rather than elaborate administrative machinery, composed in part of military officers and dollar-a-year men. A bureaucracy, which has made such a poor showing in the conduct of some classes of business in peace, should never be permitted to control private business establishments even during war times.

No student of our institutions, cognizant of the inefficiency, waste, and extravagance of the federal bureaucracy in business, can deny the desirability of taking the Government out of business and putting more business in Government. This does not mean that we should revert to the *laissez faire* policy of the period intervening between the Civil War and the early nineties. The bureaucracy should be confined to strictly governmental

functions and we can profitably recall the wise words of Washington in an annual address to the Congress, when he characterized manufacturing by the Government as "inexpedient," except that some manufacturing by the Government might be necessary to the "furnishing and equipping of the public force in time of war." He added that if such a plan were adopted, it ought to exclude "all those branches which are already, or likely soon to be, established in this country, in order that there may be no danger of interfering with pursuits of individual industry." As always, Washington was sagacious, but his advice on this and many matters has been ignored.

These wise words have long since been forgotten or ignored by Congress, with the result that in over 240 instances the Federal Government is in direct competition with individual industry. We should return to the wise policy of Washington and should so revise the law that the Federal Government should not be permitted either to conduct business or meddle in the affairs of private business, unless such business has violated the law, and then only for the purpose of invoking judicial processes for the punishment of such violations.

There is no better illustration of the pernicious effects of excessive interference by government in business than is afforded by the example of the Interstate Commerce Commission. This deserves not only a chapter, but even a volume. However, only a brief and inadequate discussion is now possible.

The Commission was created in the year 1887 and was largely the result of the revolt of the Trans-Mississippi agricultural interests in the early "seventies," which has passed into history as the Granger movement. There was substantial reason for this movement, but like many justifiable reform movements, the agitation carried the Nation into the extreme of governmental interference with business, and the result gives a fresh illustration that a remedy may often be worse than the disease.

The railroad systems of this country were primarily the result of private industry. It was not easy a century ago to enlist private capital in the construction of these great

arteries of commerce. One of the earliest and greatest of these systems, The Pennsylvania Railroad, was only financed by begging subscriptions from door to door. Excepting only the land grants, which were subsequently given by the federal government to transcontinental railroads, the stupendous capital investment of the railroad systems of the country, now far exceeding \$20,000,-000,000, was subscribed for by individuals, who assumed that their investments would be protected by the great guarantees of the Constitution as to the security of property rights.

With the too rapid development of transcontinental railroads, an era of gross extravagance and corruption resulted. There is no more shameful chapter in the economic history of America. In many instances the investors in railroad stocks and bonds were shamelessly pillaged by financial pirates, who thereby built up some of the great fortunes of the present day. An American can only recall with shame such black chapters in the financial history of the country, as the story of the Erie Railroad on the Atlantic seaboard, and the similar piracy, practiced by the great California promoters in the matter of the Central Pacific Railroad, whereby through construction contracts and diversion of traffic to favored roads, investors, many of them in foreign nations, were shamelessly defrauded of their investments.

Moreover, the railroad magnates ruthlessly exercised the power, by rebates and other forms of discrimination, to destroy one industry in favor of another, and even great communities thrived or perished under the arbitrary dictates of railroad presidents, who acted with the arbitrary power of a czar.

It is nevertheless a fact that these evils could have been cured by adequate penal laws, if such laws had been vigorously enforced by prosecuting officers; but the great wealth and slimy methods of these railroad magnates paralyzed the arm of justice itself, both in the federal government and in the constituent States. Many a railroad magnate, who died in a grandiose palace, should have died in jail.

Both the nation and the States believed that these evils could be best combated by the creation of a commission, and in 1887 Congress created the Interstate Commerce Commission and gave it limited powers to supervise the railroads of the United States, and to prescribe reasonable rates for transportation.

This commission has grown from a small organization to one employing 2,252 civil service employees in 1930. This commission has thirteen subdivisions and it decided in a single year 20,553 separate matters. There were about 4,351 lawyers registered to practice before the commission in 1930. It is a super-Board of Directors for all the railroads of the United States, and yet few, if any, of the Commissioners have ever had any practical experience in operating railroads.

The formal opinions of the commission aggregate 11,729 pages, equivalent to approximately fifteen volumes of standard size, while its hearings aggregate approximately 30,000,000 words or about the number contained in the *Encyclopediæ Britannica*. The printing costs, alone, for this commission were \$232,647.64 for the fiscal year 1931. For every dollar spent by the United States in support of the bureaucratic activities of the Interstate Commerce Commission, the railroads and local chambers of commerce spend in the aggregate at least three times as much in defending their positions. The entire cost is ultimately borne by the American taxpayer and consumer.

Although it is not, in any sense of the word, a judicial body, but on the contrary, a political administrative body, it nevertheless interferes so minutely with the operations of the railroads that they are required to maintain in Washington a staff of lawyers, who practice before the Interstate Commerce Commission, and whose number now exceed, as previously stated, over four thousand.

The annual cost of this bureau is staggering and the total cost, from its inception, must far exceed one hundred millions of dollars. This does not take into account the even greater sum imposed upon the railroads by the arbitrary demands of the Commission for information which, when secured, few if any read. It is forever sending ques-

tionnaires to railroads, requiring elaborate and costly accounts, and then sending its inspectors and examiners to fish in the affairs of the railroads, in the hope of finding something about which the Commission can complain. One railroad alone—and not one of the largest—expended \$400,000 in one year to answer the questions of the Commission, and it may be safely assumed that when these costly answers were received by the Commission, no Commissioner ever read them.

The vast documentary data which the Commission is ceaselessly acquiring, if piled up Pelion on Ossa, would far exceed the height of the Washington Monument. While the Commission is thus a clearing-house of railroad information, and as such of some value to the railroad world, the same data could be secured with infinitely less cost by such private enterprises as the publishers of Poor's Manual of Railroads. It conducts interminable inquiries, some of them lasting years, and piles up huge tomes of printed matter, and in many cases without appreciable results.

It undertook the valuation of all the railroads of the United States, and this inquiry alone cost the federal taxpayer over sixty millions of dollars, and the railroads themselves at least an equal sum. Both of these burdens fell, ultimately, upon the citizen. Nevertheless, the valuation is chiefly noteworthy from the fact that the Supreme Court declined to recognize the soundness of the Commission's methods.

It has now formulated a plan for the consolidation of all the railroads of the United States into a few great systems, and although neither the Congress nor the Commission has any constitutional power to compel such consolidation, the Commission seems to assume that it has, for it is now seeking new legislation from Congress which, in the last analysis, would give the Commission the right to determine whether any person or corporation can hold stock in more than two carriers, even though they be non-competing, if the voting of such stock would interfere with the Commission's plan of consolidation.

Even more alarming is the socialistic tendency of the Commission. It has apparently lost sight of the fact that

railroads are incorporated under State laws and their shares of stock owned by individuals, and that the States were wholly within their reserved powers in incorporating such railroads, and the citizens are guaranteed by the Constitution that their property shall not be taken without due process of law. Nevertheless, the Commission now favors a law, which would result in investing discretion in the Commission to determine who may, and who may not, own railroad stocks, by denying the condemned stockholder the right to vote his stock.

What more socialistic tendency can be found than in the recent order of the Commission in the matter of the application of the railroads in 1931 for an increase of 15% in rates? Notwithstanding the fact that nearly all the railroads were in a very serious condition, many of them being in the hands of receivers, and that without increased rates more would follow the inevitable road to bankruptcy, the Commission, when asked to sanction a 15% increase in rates, held lengthy hearings to consider the condition of these carriers, although the facts were already in the archives of the Commission and, indeed, known to all men. After holding many useless hearings, the Commission finally made an order that the railroads could have an increase of rates upon a limited number of commodities, provided that they would turn over the amount of such increase to other and weaker roads! To any old-fashioned American this socialistic proposal would have been abhorrent, but the nation is now so accustomed to the arbitrary control of the railroads by the Interstate Commerce Commission that there was little surprise or dissent, although this meant that if the Pennsylvania Railroad, owned by private investors, carries freight, it must thereupon turn over to another railroad, which did not carry the freight, the amount of the increase. Is not this robbing Peter to pay Paul, and how can it be reconciled with the conception of property rights in the railroad investors?

The Interstate Commerce Commission has done much valuable work, but the fact that, after forty-five years of its operation, the condition of the railroads is far worse than it was when the Commission began its paternal duties,

would suggest the possibility that it has done far more harm than good. This may not be true, and it would be difficult to audit its relative good and evil results, but it requires no audit to say that its benefits, whatever they may be, are not commensurate with the enormous expense that it has been to the taxpayer and to the investor. It has greatly increased the cost of railroad operation and, apart from the monetary consideration, the dead hand of the Commission has so paralyzed the initiative of business enterprise that the American railroad system, which, with all its defects, was once the greatest in the world, is now in a condition bordering on despair.

Many will not share these views. The Commission has been the sacred white elephant of our governmental system. Members of the bar and even litigants may exercise their constitutional right, when the Supreme Court decides against them, to swear at the Court, but it seems to be a species of treason for anyone to question the beneficence of the Interstate Commerce Commission. The intentions of this sacred white elephant are undoubtedly good, and like the kindly elephant in the story, which endeavored to aid the hen by sitting on the egg to hatch it, the Commission has attempted to hatch the egg of prosperity for the railroads with a result as crushing.

The time will come when the Congress will cease to regard the Interstate Commerce Commission as sacrosanct, and it will then consider whether its mischievous activities cannot be limited without sacrificing the good results of reasonable supervision of railroads. The author believes that the purely administrative and clerical work of the Commission, so far as any of it is necessary, should be transferred to the Department of Commerce. The Commission should then be abolished, and in its place a true Court of Commerce should be created, composed of men learned in the law and having all the attributes and responsibility of a court, and that Court should determine the questions of policy, in which the Commission now acts—often wisely—as an arbiter between the railroads and the public.

This Court of Commerce could have the added duty,

which will soon be imperative, of determining as a matter of law and not of legislative policy, whether agreements, now in violation of the Sherman Anti-Trust Law, ought to be temporarily or permanently permitted, in view of conditions, which at times make cut-throat competition destructive.

The railroad history of this country is not inspiring, but neither is that of the bureaucracy in the regulation of the railroads. The wonder is that the railroads, between their own mismanagement in some instances and deleterious bureaucratic control, have not long since ceased to function. As a matter of fact, they would have long since succumbed had it not been for the fact that they were able from time to time to obtain additional capital and government aid, but eventually such funds will be exhausted and unless there are immediate reforms the results will be disastrous to both the people and the railroads.

There are many other and very similar regulatory bodies. The Annual Report of the Federal Trade Commission for the fiscal year 1931 includes some 236 pages and it records the fact that it was established in an act of March 16, 1914, taking over the economic work of the Bureau of Corporations in the Department of Commerce and adding the legal activities defined in the 1914 act. The appropriation for the support of the Bureau of Corporations for the fiscal year 1914 was \$253,300, while for the fiscal year 1931, the total payroll of the Federal Trade Commission was \$1,517,600 with a staff of 546 persons, 286 holding administrative and clerical positions, 113 being attorneys, 34 economists and 97 accountants.

Its activities may be shown by the following illustrations. This commission had under investigation, pursuant to a Senate Resolution of February 15, 1928, the "large utility holding companies, their financial structure and other phases of the business." Recently it sent to the Senate its preliminary report and in less than three years more than 15,000 pages of testimony had been taken and nearly 5,000 exhibits had accumulated.

It also was engaged during the fiscal year 1931 in in-

vestigating chain stores. It was stated in the report that replies had been received from more than 1,700 chains, operating more than 66,000 retail units, 2,000 wholesalers and 4,600 independent dealers. Later supplementary inquiries were sent out to all of the business organizations.

It completed on June 22, 1931, an investigation into resale-price maintenance, which had been in progress more than two years and reached the conclusion that "there was no way to validate resale-price maintenance contracts which would not either expose the consumer to a more serious injury or impose on the administrative authorities an impracticable responsibility,"—a conclusion which must be apparent to any lawyer conversant with the decisions of the Supreme Court of the United States and the economic principles involved. The limits of this book will not permit me to discuss in detail other inquisitorial and legal work of the Federal Trade Commission. In great part, it only duplicates the work which the Department of Justice can do better, and should be abolished.

The only saving grace in the Interstate Commerce, Federal Trade, Tariff and other regulatory activities of the bureaucracy is that a direct review of their decisions is possible in the courts, though such reviews do not extend to all of their acts, and in practically all cases the conclusions of fact, made by the bureaucrats of these organizations, will not be reexamined by the courts, if any evidence supports the conclusions reached. It is not difficult for a Commission, which is prosecutor, jury and judge, to make findings of facts to support their conclusions of law, and it is reasonable to believe that if these cases could be tried *de novo* in the courts, many more of the decisions of these administrative tribunals would be reversed than at present. However, notwithstanding the narrow basis of review in the courts and notwithstanding that these bureaucrats are presumably experts in their work, every year finds a number of such decisions reversed in the courts upon questions of law.

Such inquisitorial activities are not intermittent searches for specific facts; they are continuous. It has been esti-

mated that more than \$20,000,000 a year is being spent in gathering facts and that fifty-two governmental agencies are feverishly sending out questionnaires and compiling data.

The National Banking System, which was established during the Civil War period, has been constantly under the supervision of the Comptroller of the Currency, a subordinate of the Secretary of the Treasury, who has had the power to examine the banks at such intervals as he deemed necessary and at least once or twice each year, with authority to call for reports as to the condition of the banks at any time. The salaries and expenses of the bank examiners are paid out of assessments on the National Banks. That this supervision has not been wholly effective is established by the many National bank failures each year. However, it is one of the most useful of the federal bureaus and such supervision is a true and necessary function of government.

No one would suggest a *laissez faire* policy with respect to private industry of a monopolistic character. On the contrary, such industry should be subjected to reasonable regulation. As has been elsewhere pointed out in this book, bureaucracy, once established, reaches out for more power. Like Othello's jealousy, it "makes the meat it feeds on." This is illustrated by the Federal Power Commission, created in 1931 to concern itself with the "location, design, construction, maintenance and operation of power projects on navigable streams." However, one of its first decisions attempted to extend its jurisdiction to non-navigable streams running into navigable streams. No grant of power in the Constitution sustains this claim of more power.

Whether the Federal Government engages indirectly in business through the operation of ships on the high seas or barges and steamboats on the inland waters, and whether its business activities are carried on through the medium of Government-owned corporations or directly by the administrative departments and establishments, the results are too frequently disastrous to the American taxpayer. The results of this Government paternalism

through attempts to unduly regulate business are equally disastrous. An unsupportable burden is placed on a business enterprise, when it must defend itself at huge expense from bureaucratic investigation and regulation, while trying to earn sufficient to pay the taxes necessary to further arm the Government against it.

## CHAPTER XII

### BUREAUCRACY AS PROSECUTOR, JURY AND JUDGE

"The twelve jurors were all writing very busily on slates. 'What are they doing?' Alice whispered to the Gryphon. 'They ca'n't have anything to put down yet, before the trial's begun.'

"They're putting down their names," the Gryphon whispered in reply, "for they fear they should forget them before the end of the trial."—ALICE IN WONDERLAND.

THE Lord Chief Justice of England recently published a book, entitled *The New Despotism* in which he forcefully pointed out the subversion of Anglo-Saxon ideals of justice by the power of bureaucracy in England to make laws, interpret them, prosecute under them, and then act as judge and jury. Referring to the bureaucrat of his own country, he said:

"This course will prove tolerably simple if he can (a) get legislation passed in skeleton form, (b) fill up the gaps with his own rules, orders and regulations, (c) make it difficult or impossible for Parliament to check the said rules, orders, and regulations, (d) secure for them the force of statute, (f) arrange that the fact of his decision shall be conclusive proof of its legality, (g) take power to modify the provisions of statutes, and (h) prevent and avoid any sort of appeal to a Court of Law."

The Supreme Court of the United States declared in 1868, in *The Floyd Acceptances*, 7 Wallace, 666, that "we have no officers in this government, from the President down to the most subordinate agent, who does not hold office under the law, with prescribed duties and limited authority," and the Court added the further declaration that in order to determine the authority of such officers we must resort in every instance to constitutional or statutory law.

This was once a law—it is no longer so. Limitations of

space do not permit more than a passing reference to this very important phase of the subject.

Congress gave authority as early as the act of July 27, 1789, 1 Stat. 28, for the making of certain regulations, having the force of law by the administrative heads of departments and now section 161, Revised Statutes, provides that "the head of each Department is authorized to prescribe regulations not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use and preservation of the records, papers and property appertaining to it." Section 251, Revised Statutes, gives almost blanket authority to the Secretary of the Treasury to issue regulations for collecting taxes and violations of these can be punished by forfeiture of property and even liberty. The regulations issued under his authority for collecting the internal revenue taxes, including income taxes, comprise a closely printed volume of many pages. As previously stated, the Army regulations constitute about five large loose leaf volumes, while those for the Navy and Marine Corps are no less voluminous.

Practically every agency of the Government, including the independent boards, commissions, and establishments, have comparatively elaborate regulations concerning various details of their work and in many instances affecting private rights. The courts have gone so far as to hold that individuals are chargeable with notice, that is, with knowledge, of the contents of regulations promulgated in accordance with law and that the courts will take judicial notice of such regulations. (*Caba v. United States*, 152 U. S. 211.)

The courts have even gone further and have held that the administrative interpretation of statutes enacted by the Congress, unless clearly erroneous, will be sustained, the Supreme Court of the United States saying in *United States v. Johnson*, 124 U. S. 236, that:

"The contemporaneous construction of a statute by those charged with its execution, es-

pecially when it has long prevailed, is entitled to great weight and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous."

The bureaucracy of the American government has not only thus secured by the terms of general law the authority to issue regulations, but nearly every statute, creating various new governmental organizations or conferring additional authority on existing organizations, grants either specifically or by implication the power to issue regulations to carry out the terms of the statutes and if an individual runs afoul of one of these regulations he may find himself convicted of a crime, as in *Bailey v. United States*, 9 Peters 238, where it was said in upholding the conviction that:

"We are of opinion that the Secretary of the Treasury did, by implication, possess the power to make such regulation (authorizing affidavits to be made before State officers), and to allow such affidavits in support of claims, under the act of 1832. It was incident to his duty and authority, in settling claims under that act."

While few regulations issued by the bureaucracy purport to make their violation a crime, such as were upheld in the *Bailey* and *Caba* cases, nevertheless in appropriate cases the power to make such regulations exists and has been upheld by the Supreme Court.

Thus the bureaucracy becomes law-maker, prosecutor, judge and jury.

For instance, there is a rule of the courts, of many years standing, that a petitioner for a writ of habeas corpus in an immigration proceeding cannot obtain a judicial review of the facts, if they give any support to the conclusion reached by the officials in charge of the immigration laws that the alien should be deported. The Supreme Court of the United States restated the general rule in *Kwock Jan Fat v. White*, 253 U. S. 454, as follows:

"It is fully settled that the decision by the Secretary of Labor, of such a question as we have here (one of deportation), is final and conclusive upon the courts, unless it be shown that the proceedings were 'manifestly unfair,' were 'such as to prevent a fair investigation' or show a 'manifest abuse' of the discretion committed to the executive officers by the statute or that 'their authority was not fairly exercised;' that is, consistently with the fundamental principles of justice embraced within the conception of due process of law."

Similar principles have been applied by the courts in refusing to review the facts found and stated by such commissions as the Federal Trade Commission, directing and ordering business concerns to cease and desist from certain forms of alleged unfair competition; by the Interstate Commerce Commission, in ordering changes in railroad rates or directing by a reparation order that a carrier refund to a shipper charges collected from him in excess of a fair and reasonable rate, as declared by such commission; by the board of tax appeals in making findings of facts in tax cases; and in numerous other similar types of cases, arising in other departments and establishments of the government, including the administration of the Packers and Stock Yards Act by the Secretary of Agriculture and the radio statutes by the Radio Commission. Millions of dollars may be invested in private business activities by citizens subject to the control of these regulatory commissions and yet the citizen cannot secure in the courts a review of the facts involved in these cases and almost always the controversy is largely, if not exclusively, one of fact.\*

\* "At an early date it was held that Congress could delegate to the Courts the power to regulate process, which certainly is lawmaking so far as it goes. *Wayman v. Southard*, 10 Wheat. 1, 42. *Bank of the United States v. Halstead*, 10 Wheat. 51. With regard to the Executive, Congress has delegated to it or to some branch of it the power to impose penalties. *Oceanic Steam Navigation Co. v. Stranahan*, 214 U. S. 320; to make conclusive determination of dutiable values, *Passavant v. United States*, 148 U. S. 214; to establish standards for imports, *Butfield v. Stranahan*, 192 U. S. 470; to make regulations as to forest reserves, *United States v. Grimaud*, 220

Under the Stockyard Laws, the Secretary of Agriculture was given the power to determine conclusively the compensation of commission men for purely personal service in the stockyards. Believing that there were too many commission men in the Omaha stockyards, he deliberately fixed a rate so low that the smaller men could not make a livelihood and thus he was enabled to turn their business over to their stronger competitors. Thus again was Peter robbed to pay Paul. (*Tagg Bros. & Moorhead v. United States*, 280 U. S. 420.)

In all of these cases the statutes either directly or by implication, as in the *Bailey Case* above cited, delegated authority to these commissions, boards or officers to make *prima facie* and in some instances, conclusive findings of fact in any controversy coming before them. The terms of the statutes are not entirely uniform with respect to the effect of such findings of fact, but nevertheless there is no escape from the proposition that in many, too many, disputes between the citizen and these commissions, boards or government officials, the citizen has been denied any adequate resort to the judicial branch of the United States, except as to questions of law and these are rarely controlling.

Congress is primarily responsible for making the bureaucracy the judge and jury in such cases of importance, but it was not responsible for the clauses, which have been placed in government contracts and upheld by the courts as final and conclusive on the thousands of contractors, who annually do business with the Government, and which made final the will of the bureaucracy in all disputed questions of fact arising under the contracts. Under the

U. S. 506, and other powers not needing to be stated in further detail. *Houston v. St. Louis Independent Packing Co.*, 249 U. S. 479. *Union Bridge Co. v. United States*, 204 U. S. 364. *Ex parte Kollock*, 165, operation of a statute, even one suspending commercial intercourse with another country, *Field v. Clark*, 143 U. S. 649, and very recently it has been decided that the President might be given power to change the tariff. *J. W. Hampton, Jr., & Co. v. United States*, 276 U. S. 394. It is said that the powers of Congress cannot be delegated, yet Congress has established the Interstate Commerce Commission, which does legislative, judicial and executive acts, only softened by a *quasi*; makes regulations, *Intermountain Rate Cases*, 234 U. S. 476, 486, issues reparation orders, and performs executive functions in connection with Safety Appliance Acts, Boiler Inspection Acts, &c." Justice Holmes in *Springer v. U. S.*, 277 U. S. 212.

forms of contracts, which are required by the Federal Government—and which contractors have no option but to sign if they desire to do business with the United States—the determination by the contracting officer, subject to appeal to the head of the department concerned, is conclusive of all disputed questions of fact arising under the contract or its specifications. The review by the head of the department is generally futile, and in a recent case the head of a department approved the action taken by his subordinates, when the papers were not only not before him, but in a separate government office. The courts have consistently refused to consider whether such determinations of the facts are correct, unless gross fraud or mistake be shown, a difficult task in any case.\*

The contract forms now in use were drafted by an Interdepartmental Board, working under the supervision of the Bureau of the Budget. They were then promulgated by the President for uniform and obligatory use throughout the Government service. The contracting industry was not permitted representation on that board and when a bill was introduced in Congress to remove the grip of the bureaucracy from the throat of industry, many of the members of the board vigorously opposed any liberalization of the contracts. As a result of these oppressive conditions, the federal government must ordinarily pay more for its construction work than private concerns.

Lord Hewart in *The New Despotism* has vigorously arraigned the tyranny of bureaucracy in his own country. He says most forcefully:

“When it is provided that the matter is to be decided by the Minister, the provision really means that it is to be decided by some official, of more or less standing in the Department, who has no responsibility except to his official superiors. The Minister himself in too many cases, it is to be feared, does not hear of the matter or the decision, unless he finds it necessary to make

\* See *Penn Bridge Company v. United States*, 59 Ct. Cls. 892, and cases therein collected.

enquiries in consequence of some question in Parliament. The official who comes to the decision is anonymous, and, so far as interested parties and the public are concerned, is unascertainable. He is not bound by any particular course of procedure, unless a course of procedure is prescribed by the Department, nor is he bound by any rules of evidence, and indeed he is not obliged to receive any evidence at all before coming to a conclusion. If he does admit evidence, he may wholly disregard it without diminishing the validity of his decision. There is not, except in comparatively few cases, any oral hearing, so that there is no opportunity to test by cross-examination such evidence as may be received, nor for the parties to controvert or comment on the case put forward by their opponents. It is, apparently, quite unusual for interested parties even to be permitted to have an interview with anyone in the Department. When there is any oral hearing, the public and the press are invariably excluded. Finally, it is not usual for the official to give any reasons for his decision.

To employ the terms administrative 'law' and administrative 'justice' to such a system, or negation of system, is really grotesque. The exercise of arbitrary power is neither law nor justice, administrative or at all. The very conception of 'law' is a conception of something involving the application of known rules and principles, and a regular course of procedure. There are no rules or principles which can be said to be rules or principles of this astonishing variety of administrative 'law,' nor is there any regular course of procedure for its application. It is possible, no doubt, that the public official who decides questions in pursuance of the powers given to his Department does act, or persuades himself that he acts, on some general rules or principles.

But, if so, they are entirely unknown to anybody outside the Department, and of what value is a so-called 'law' of which nobody has any knowledge?

The system of so-called administrative law in this country has little or no analogy to the *droit administratif* of the Continent, and is an indescribably more objectionable method. The *droit administratif* is administered by real tribunals, known to the parties, and these tribunals apply definite rules and principles to the decision of disputes, and follow a regular course of procedure, though the rules and principles applied are different from those of the ordinary law governing the relations of private citizens as between themselves. Moreover, the tribunals give reasons for their decisions and publish them. In a word, the 'administrative tribunals' of the Continent are real Courts, and what they administer is law, though a different law from the ordinary law. More than that, the *droit administratif* is a regular system of law, applicable not only to all matters pertaining to the public service, but also to all disputes between the Government or its servants on the one hand and private citizens on the other hand. Administrative 'law' in this country is not really a system at all, but is simply an exercise of arbitrary power in relation to certain matters which are specified or indicated by statute, not on any definite principle, but haphazard, on the theory, presumably, that such matters are better kept outside the control of the Courts, and left to the uncontrolled discretion of the Executive and its servants."

To America it can be said of this indictment of arbitrary government: "*Mutato nomine, de te fabula narratur.*"

These statements concerning administrative lawlessness

in the administrative branch of the English government are true—if not to a greater degree—of the federal bureaucracy. As heretofore pointed out, the heads of departments and their assistant secretaries hold office for comparatively short periods of time and they cannot during such short periods become familiar with all of the duties of their departments—certainly not of the more technical phases of such duties. The consequence is that the heads of departments make nearly, if not all, of the decisions in name only, while the case is actually developed and the written decision prepared by some unnamed and to the outside world unknown individual, who is only a subordinate in the department. After approval of such decision by administrative superiors, it is finally placed on the desk of a secretary or assistant secretary for signature. It is almost always signed, for the first law of all Departments is to approve the acts of a subordinate.

It requires no argument to demonstrate that if the decision is made by statute, regulation or contract final and conclusive, the shortcomings of such decisions can rarely be shown. Again to quote the forceful reasoning of Lord Chief Justice Hewart: \*

"To apply reflection of this kind to the present matter, it is obvious that the critics of departmental despotism desire, not litigation, but that fairness of decision which, while it renders litigation in general unnecessary, is enormously encouraged and fostered by the prevailing knowledge that, in case of need, there is a Law Court in the background. It is not in the smallest degree desired that the departmental decisions, when they are given, should be of such a kind as to call for review and correction by a Court of Law. On the contrary, what is desired is the exact opposite. But the best way of securing that result is to provide that the decision which is taken may, if the party aggrieved be so minded, be brought before the Courts in the

\* *The New Despotism*, pp. 161-163.

ordinary way. Or rather, to be more accurate, it is necessary that there should not be a statutory provision which deprives the aggrieved party of that remedy. The same conclusion is reached if the matter is considered from the point of view, not of the citizen but, of the Department. One has to contemplate a case where some comprehensive scheme or programme is being carried out, under which the rights of particular individuals are, or may be, seriously affected. The statute provides that, if questions of a certain kind arise, the decision is to rest with the Minister—that is, with some official in a particular Department. What is likely to be the effect, in the long run, upon the mind of that official if he knows beforehand that any decision which he may give, however unreasonable it may be, and however little capable of being co-ordinated with other decisions given in a similar way, cannot in any circumstances be questioned before a Judge? Nobody imagines that he approaches the task with the conscious intention of doing injustice. But it is tolerably obvious that in such a case different considerations may apply from those which would naturally lead up to an extremely careful and well-considered system where every decision was made with the knowledge that at any moment both it and the rest might have to be explained and defended in public before an impartial investigator.

Nor should at least two other considerations be overlooked. The first is that, as things stand, the official charged with the final and unimpeachable right of giving the decision is to all intents and purposes the other party to the controversy. The scheme is really ludicrous. One of the parties is absent; there is no hearing; the decision is given by the opposite party; and there is no appeal. It is certainly a simple and expeditious way of disposing of controversial ques-

tions. But it is hardly likely to bring into existence a body of case-law that would stand examination. The other consideration—and it is fundamental—is that this invidious task, this almost impossible duty of doubling the parts of party and judge in the absence of the other party, is not something which is thrust from outside upon a body of reluctant officials. No, it is they who seek it, it is they who ask for it, and it is they who contrive it. It is not that some other authority shirks and evades the duty. All others are deliberately excluded, and it is a cardinal feature of the departmental scheme, departmentally conceived and departmentally brought to birth, that the Department itself should possess these despotic powers. That is a sinister fact which should never be forgotten."

As in England, so in America, officials—"dressed in a little brief authority" seek the powers.\*

This constantly growing administrative lawlessness of the bureaucracy reaches its greatest limits in the conduct of Government-owned corporations, either incorporated by acts of Congress or under State or District of Columbia laws pursuant to authority granted in such acts. These corporations often fail to observe the statute or charter

\* As the author stated from the floor of the House of Representatives during the 71st Congress in opposition to a provision in a tariff bill to permit the Chief Executive, upon report of the Tariff Commission, to raise or lower tariff rates named in the bill:

"I want to consider first what was the genesis of such a provision which . . . proposes to transfer an almost absolute power of taxation on every article of merchandise within a given minimum and maximum to the President of the United States. Having had some experience with the executive branch of Government, I suspect that this proposal did not originate in the Committee on Ways and Means. I suppose it arose in the mind of one of those theoretical economists who had recently been a professor in some college, and they are as full of ideas as a dog is full of fleas—who first persuaded the Tariff Commission to do what every other Government bureau does, namely, having acquired power to reach out for more power. Having persuaded the Tariff Commission, and the Tariff Commission having persuaded the Treasury Department, the Treasury Department then sends the recommendation to the Committee on Ways and Means, and, as an administrative measure, the Committee concludes that the greater wisdom of the Executive branch of the Government should prevail; and as Congress accepts the recommendation of the Committee on Ways and Means, an ancient power of Congress is transferred to the Executive because the governmental bureau seeks more power."

of incorporation and by-laws, and no statutory procedure has been prescribed in their organization to compel the officers and employees to act within the limits of their corporate authority. With no personal and pecuniary interest in such Government-owned corporations, by which they are employed, they may ride more ruthlessly over any obstacles than can the members of the bureaucracy in charge of the administrative departments and establishments of the government. This is shown in a preceding chapter where we considered the operations of the Fleet Corporation and the two corporations organized by the Federal Farm Board.\*

May not the proper solution of the problem of government discussed in this chapter lie in the enactment of a general statute, which would permit review in the courts of any decision of an administrative officer of the government on both the law and the facts? To hear and determine all such cases, there should be an administrative court. As the Circuit Courts of Appeals and Supreme Court

\* Some of the results of such delegation of uncontrolled discretion to officers of the government were mentioned by O. R. McGuire, Esq., in *27 American Bar Association Journal*, 545, 546, where uncontrolled discretion was conferred on the Administrator of Veterans' Affairs, a comparatively minor official, in the expenditure of large sums of public money, as follows:

"This transfer of power is effected, as in the Veterans' Bureau bill mentioned, by the simple process of giving some official in the executive branch of the Government—an official who is generally not elected by the people but who is appointed for a comparatively short term of office, or during the pleasure of the President, and thus subject to political control—power to decide all questions of law or fact arising in the administration of the particular law, coupled with a provision that his decision shall be final and conclusive. That is all there is to it. No matter what public or private rights are involved, and no matter how important these rights may be, there is no appeal either to the Congress, as the elected representatives of the people, nor to the courts, from any decision that may be made by the individual who happens to hold the particular office, or of the individual who may be acting for him. As it is ordinarily impossible for such officer to personally study each and every case that must be decided under the particular law, such a provision, in practice, generally means that some subordinate employee prepares the decision and promulgates it in the name of the particular officer designated by law.

"The result of such a procedure is at least two-fold. The aggrieved person, who may or may not be entitled to the relief demanded, resorts to political pressure through the Senators and Congressmen from his State on the officer empowered by law to render the decision or to change the decision rendered so as to give him the relief sought. If political pressure is unsuccessful and the relief is a claim for money, such individual and his friends insist that the Senators and Representatives from his State introduce and secure the passage of a private bill specifically directing that the claim be paid. The individual who has a claim unjustly denied and is without political influence is simply unfortunate. So, also, is the public. It must pay claims improperly allowed."

could not congest their calendars by such litigation, the decision of such administrative court—consisting of judges learned in the law, and independent of all executive departments—should be final.

Repeated references have been made to Lord Chief Justice Hewart's indictment of English bureaucracy in his *New Despotism*. The book made so profound an impression upon public opinion that Lord Chancellor Sankey, on October 30, 1929, constituted a commission to consider what safeguards were necessary "to secure the constitutional principles of the sovereignty of Parliament and the supremacy of law."

The commission filed a report of 138 pages, on March 17, 1932, and, as in the case of little Alice, England found itself, after a long inquiry and many words, about where it had started, notwithstanding much apparent motion. The commission reported that whenever the executive made judicial decisions there should always be an appeal to the courts, but that the decisions of the executive on questions of fact should be final. It recommended that such inquiries should be so safeguarded that no ministers should sit in a case in which he had any "interest" and should be given reasonable publicity.

Notwithstanding the length of the report, it added little to the science of government on this vital question of the exercise by the administrative offices of judicial functions. Its inconclusive conclusions are reminiscent of the Wickersham Committee. The Sankey Commission cost the treasury only £241 8s. 6d., while the bewildering Wickersham report cost the American taxpayer \$500,000. The two reports are alike in the Micawberesque method of paying a debt to Reform by giving a promissory note.

## CHAPTER XIII

### BUREAUCRACY AND APPROPRIATIONS

"Will you walk a little faster?" said a whiting to a snail,  
"There's a porpoise close behind us, and he's treading on my  
tail."

See how eagerly the lobsters and the turtles all advance!  
They are waiting on the shingle—will you come and join the  
dance?  
Will you, wo'n't you, will you, wo'n't you, will you join the  
dance?"

—ALICE IN WONDERLAND.

THE Congress of the Confederation more than a century ago learned the lesson that restrictions and directions in statutes for the expenditure of appropriated moneys are not self-executing and therefore designated a committee of its members to supervise such expenditures. As the number of accounts and claims grew larger, the members of this congressional committee found the task too difficult and by an ordinance of September 26, 1778, the Continental Congress created certain officers to supervise expenditures. A comptroller and auditor were appointed, whose duties were defined in the ordinance as follows:

"That the auditor shall receive the vouchers and accounts from the commissioners to whom he referred them, and cause them to be examined by his clerks. He shall compare the several articles with the vouchers, and if the parties concerned shall appeal from the judgment of the commissioners, he shall call before him the commissioners and the party, and hear them, and then make determination, from whence no appeal shall lie, unless to congress. That after a careful examination of the account as aforesaid, he shall transmit the account and vouchers to the comptroller.

That the comptroller shall keep the treasury books and seal, and shall file all the accounts and

vouchers on which the accounts in said books are forwarded, and shall direct the manner of stating and keeping the public accounts. He shall draw bills under the said seal, on the treasurer, for such sums as shall be due by the United States, on accounts audited (which, previous to the payment shall be countersigned by the Secretary of Congress) . . . That when monies are due to the United States on accounts audited, he shall notify the debtor, and (after hearing him if he shall desire to be heard) fix a day for payment (according to the circumstances of the case not exceeding ninety days), of which he shall give notice to the auditor, in writing . . .

That he shall, every quarter of a year, cause a list of the balances on the treasury books to be made out by his clerks, and lay it before congress. That where any person hath received public monies, which shall remain unaccounted for, or shall be otherwise indebted to the United States, or have an unsettled account with them, he shall issue a summons . . . in which a reasonable time shall be given for the appearance of the party, according to the distance of his place of residence from the treasury, of which he shall notify the auditor.

That in case a party summoned on account shall not appear nor make good essoign, the auditor, on proof of service made in due time or other sufficient notice, shall make out a requisition . . . which he shall send to the comptroller's office, where the same shall be sealed, and then it shall be sent to the executive authority of the State in which the party shall reside."

All claims and accounts were thus required to be settled and adjusted by the accounting officers, and no money could be taken from the treasury of the Confederation without the countersignature of these officers.

These identical requirements have continuously re-

mained a part of the law, but other features of the ordinance of 1778 were slightly modified from time to time in the act of September 2, 1789, establishing the Treasury Department and the amendatory acts of March 3, 1817, July 31, 1894, and the Budget and Accounting Act of June 10, 1921. The act of March 3, 1817, substituted two comptrollers and four auditors for the one comptroller and one auditor under the ordinance of 1778 and the act of 1789. These auditors and comptrollers did not control the funds of the Post Office Establishment, and as was pointed out by former Senator (now Circuit Judge) Kenyon in his opinion of February 2, 1931, in the *Lambert Lumber Company case*, 47 Fed. (2nd) 74, Postmaster General Kendall in his annual report of 1835, urged that such protection be extended to the funds under his control in the following statement:

"There is another feature in which the present organization of the Post Office Department is defective and unsafe. It is believed to be a sound principle, that public officers who have an agency in originating accounts, should have none in their settlement. The War and Navy Departments are in general organized upon this principle. In the orders, contracts and regulations of the heads of those departments, or their ministerial subordinates, issued and made in conformity with law, accounts originate; the moneys are generally paid by another set of agents but partially dependent on the heads of the departments; and the accounts are finally settled by a third set who are wholly independent of them. If from any cause, an illegal expenditure be directed by the head of a department, it is the duty of the disbursing agent not to pay the money; and if he does pay it, it is the duty of the Auditors and Comptrollers to reject the item in the settlement of his account. But the Postmaster General practically unites these three functions in his own person. He issues orders

and makes contracts and regulations producing the expenditure of money, settles the accounts and pays the money. Although he is required to render a quarterly account to the Treasury, to be settled as other public accounts are, this requisition has long ceased to constitute any practical check upon him, nor can it ever be otherwise under the existing system."

Congress approved this recommendation by the act of July 2, 1836, 5 Stat. 270, and created an Auditor of the Treasury for the Post Office Department and somewhat later, a third comptroller in the act of March 3, 1849, 9 Stat. 395, who has since developed, as Commissioner of Customs, into an administrative officer with practically no accounting control functions. By the act of July 31, 1894, the accounting system was reorganized with one comptroller and six auditors, but the comptroller was no longer the reviewer of the settlements of accounts and claims made by the auditors, unless the claimant or the head of department concerned requested such review. The comptroller was authorized in the statute to review settlements of the auditors on his own motion but this authority was seldom exercised.

Throughout this long period the auditors and comptrollers continued to settle and adjust the accounts of the spending agencies of the Government and to settle claims arising from the activities of such spending agencies, but a sword of Damocles hung over them, due to the fact that they were a part of the Treasury Department, one of the greatest of the spending agencies, and the further fact that they could be removed at any time by the appointing power, the President.

When the original Treasury act of 1789 was under consideration, Mr. Baldwin stated that he "was not an advocate of unlimited authority in the Secretary" and that:

"He hoped to see proper checks provided: A Comptroller, Auditor, Register, and Treasurer. He would not suffer the Secretary to touch a

farthing of the public money beyond his salary. The settling of the accounts should be in the auditors and comptrollers; the registering of them to be in another officer; and the cash in the hands of one unconnected with either."

Mr. Smith, of South Carolina, stated that the comptroller should be independent of the executive departments in order that his decisions might not be influenced by them and James Madison, with his clear vision, questioned very much whether the executive departments,—

"can or ought to have any interference in the settling and adjusting the legal claims of individuals against the United States. The necessary examination and decision in such cases partake too much of the judicial capacity to be blended with the executive. I think it is rather distinct from both, though it partakes of each, and therefore some modification, accommodated to these circumstances, ought to take place."

However, it seemed to be the conclusion of a majority of the First Congress that since the Secretary of the Treasury was required to report direct to Congress and the accounting officers were to be appointed by the President, there would be little or no control by the administrative branch of the Government over the accounting officers, and this view seems to have been that of Mr. Kendall in 1835. But the accommodations to those circumstances which ought to take place, as mentioned by Mr. Madison, were not made until 1921, and Judge Kenyon epitomized such changes then made in his above referred to opinion, as follows:

"The Budget and Accounting Act brought about the much-needed reform of a budget system in the Government. The Comptroller General was to be appointed for a period of fifteen

years, and could not be removed by the President, nor was he eligible for reappointment. The provisions of the law were to be exercised without direction from any other officer. It provided: that the General Accounting Office 'shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States,' and removed the authority and jurisdiction of accounting officers of the Treasury to the General Accounting Office, conferring on the Comptroller General all the powers and duties formerly exercised by the six Auditors of the Treasury Department and the Comptroller of the Treasury, and went even beyond this in granting authority to the Comptroller General. It gave to the General Accounting Office power to settle all claims and demands by or against the Government of the United States; to the Comptroller General power to prescribe the forms, systems and procedures for the departments of the Government in their 'administrative examination of fiscal officers' accounts and claims against the United States.' The term 'administrative examination' is found in the Act and the report to the Senate referred to, *supra*, speaks of 'administrative examination.' It was intended to set up a department independent of the executive department under the control of the Comptroller General, and to make the balances certified by the Comptroller General final and conclusive upon the executive branch of the Government. The Act provides effectual methods for determining whether the appropriations of Congress are spent in the method and for the purposes provided by Congress."

By that act of 1921, Congress again asserted its control over appropriated moneys and President Coolidge said in his annual message of December 8, 1925,

"The purpose of maintaining . . . the Comptroller General is to secure economy and efficiency in government expenditure. No better method has been devised for the accomplishment of that end. These offices can not be administered in all the various details without making some errors both of fact and of judgment. But the important consideration remains that these are the instrumentalities of the Congress and that no other plan has ever been adopted which was so successful in promoting economy and efficiency. The Congress has absolute authority over the appropriations and is free to exercise its judgment, as the evidence may warrant, in increasing or decreasing budget recommendations. But it ought to resist every effort to weaken or break down this most beneficial system of supervising appropriations and expenditures. Without it all the claim of economy would be a mere pretense."

As early as 1803 Congress departed from the earlier procedure of making lump sum appropriations to be used more or less in the discretion of the spending agencies of the Government and provided in what is now section 3678, Revised Statutes, that all sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which appropriated and for no others. There are many other restrictive provisions in the law as to expenditures, such as that no contract shall be let except after advertising and to the lowest responsible bidder; that no lands shall be purchased or public buildings built until after Congress has made a specific appropriation for such purposes; that no officer of the Government shall receive two salaries, if the aggregate thereof is in excess of \$2500; that no pay for extra services shall be made unless expressly authorized by law; and various other restrictions comprising a volume of some 203 printed pages.

It is the primary function of the General Accounting

Office, in the immediate charge of the Comptroller General, to be the eyes of Congress and to see that these directions and limitations, so laboriously and painstakingly placed in the law, are observed to the letter by the spending agencies of the Government. As stated by Judge Kenyon, the Comptroller General was made independent of the Executive Department and given a long term of office to enable him to enforce the statutory restraints on expenditures, and, as stated by President Coolidge, the Comptroller General is the specific agent of Congress for that purpose. Even before the 1921 act, Mr. Taft had stated in his book, *Our Chief Magistrate and His Powers*, that the President could not revise or review a decision of the Comptroller, a position which had been taken by all of his predecessors, including President Jackson, who having before him an opinion of Attorney General Berrien (contrary to that of his predecessors that the President could review such a decision), nevertheless refused to exercise such jurisdiction and wrote across the papers:

"The report made, and Attorney General's opinion referred to. The decision of the Second Comptroller is final, over whose decisions the President has no power, except by removal. The Secretary of War will make this decision known to Mr. Peebles.

"July 1, 1833.

A. J."

As pointed out in a preceding chapter, the Government-owned corporations, created by Congress, are in a different class and largely escape the scrutiny of the Accounting Department. They are given the purse of Fortunatus and spend it as liberally.

Witness the stabilization corporations, created by the Farm Board, with their expenditure of over \$300,000,000 in gambling in grain and cotton. Congress can only know of the activities of such organizations through investigations, such as were conducted as to the leasing of oil lands or of the work of the subsidiaries of the Federal Farm Board.

With respect to the lack of control by law enforced by the Comptroller General over Government-owned corporations, the Supreme Court of the United States said in *United States ex rel Skinner & Eddy Corporation v. McCarl*, 275 U. S. 1, 13,

"At no time, during the war, or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the general accounting officers of the Government, or have been passed upon, as accounts of the United States, either by the Comptroller of the Treasury or the Comptroller General. The accounts of the Fleet Corporation, like those of each of the other corporations named, and like those of the Director General of Railroads during federal control, have been audited, and the control over their financial transactions has been exercised, in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration. Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States."

Unquestionably the court, speaking through Mr. Justice Brandeis, was correct in its theory of the case, but if any commercial business were conducted as the Fleet Corporation, Grain and Cotton Stabilization Corporations, and a number of other Government-owned and controlled corporations, they would have long since gone into the hands of receivers. Congress should make the Comptroller General the accounting officer of these corporations, with authority to deny any and all payments, which their administrative officers proposed to make illegally,

or even extravagantly, or for purposes not within the powers of the corporations as shown by the federal statutes or charters of incorporation.

The Comptroller General correctly stated in his report of January 8, 1932, to Congress with respect to the Fleet Corporation—and his remarks are equally applicable to all Government-owned corporations—

"It is appreciated that when the Government undertakes the conduct of a business, commercial in nature, such as the operation of vessels in commerce, a railroad, etc., there may frequently be required expenditures, because of the nature of the business undertaken, that could not properly be allowed by the accounting officers under existing law, if made in connection with the conduct of the Government. While the logical and safe method of affording the latitude needed in such isolated instances would have been to require an accounting as for Government moneys generally, with full authority in the accounting officers to allow credit for payments not otherwise allowable but shown to be necessary because of the nature of the business or activity, there was conceived and proposed the plan of a Government-owned corporation (possibly just to secure unlimited and unrestricted authority in the uses of the public moneys involved), and the Fleet Corporation is such a creature. Had the logical and safe method been adopted there would have been provided all proper and necessary safeguards and yet there would have been granted all latitude necessary to the conduct of the authorized enterprise or business. By adopting the method of operating through a Government-owned corporation, with no requirement for accounting for the public moneys employed, there were abandoned the safeguards the Congress almost invariably employs, where the uses of public

moneys are involved, to protect the interest of the Public Treasury, discourage favoritism and fraud, and require fair and equal treatment of citizens."

Unfortunately, in setting up the General Accounting Act of 1921, Congress did not give to the Comptroller General jurisdiction respecting the accounting for the collection and refund of taxes and customs, with the result that there is more litigation over such matters than over other business of the Government. Equally unfortunately, Congress did not fully set forth in the General Accounting Act the necessary control over the specifications, which are advertised as the basis of Government contracts, sometimes so restrictive that no one except a favored bidder can meet the specifications, nor over the terms of contracts, with the result that there are more or less continuous complaints on the part of business men of the strangle-hold, to which they are subjected by the bureaucracy.

Congress could refuse to make appropriations for the payment of the expenses of the various activities of the Government until there was an audit and settlement of the accounts, rejecting such as are improper, before making appropriations to pay the balance. As ex-President Taft said in *Our Chief Magistrate and His Powers*, "The power over the purse is, however, practically the greatest power, and that Congress exercises without control by either of the other branches," and that "the legislative power to withhold appropriations is that which in the history of constitutional government has always been the most powerful agency in defense of the people's rights."

Congress in order to ascertain whether public money is spent in accordance with the laws of the appropriations and to prevent its use for unauthorized or illegal purposes, could refuse under article 1, section 9, of the Constitution to make further appropriations, until it has an opportunity to examine the commitments incurred to see whether such commitments are in compliance with the law or it could have an agent, with sufficient assistants

to examine the commitments and see that they come within the purposes authorized by law and if they do not, to refuse to approve expenditures for such commitments. Such is the principal function of the Comptroller General.

The Comptroller General and his assistants are equally available to the legislative committees of the Senate and House, when they are attempting to frame basic legislation, for which appropriations will be necessary for their execution. However, there is far less of this use of the Comptroller General than is desirable and there is no uniform rule followed by the various committees, the personnel of which changes to a greater or less degree with each election. The new members of the committees can at first know little of the history and operation of the laws which they are requested to change, while the bureaucracy is thoroughly familiar with both the history and operation of such laws. Some of the committees call upon the Comptroller General for his experience in passing upon innumerable separate expenditures and some do not. No committee of Congress should report an appropriation bill until that committee had consulted with the Comptroller General with respect to the administrative features of the bill and as to whether Congress is making any further surrender to the bureaucracy of control of public money.

It will readily be seen that the General Accounting Office is no part of the bureaucracy and is for the most part its countercheck or balance wheel, operating with Congress in attempting to control by law the public business, where such conduct requires the expenditure of public money.

In concluding this chapter a word of personal explanation seems necessary. When the author was Solicitor General a bill had been introduced in the House and referred to its Committee on the Judiciary, affecting the powers of the Comptroller General, and the author made an argument on May 27, 1924, before the Committee to the effect that there should be no official at the head of the accounting system, who was not responsible to, and removable by the President. No action was taken on the bill by the

Committee and subsequently in my argument of the *Myers case* I attempted to strengthen it by reference to the Comptroller General's tenure of office, following in some respects my argument before the House Committee on the Judiciary. After I had resigned the office of Solicitor General and pending the decision of the Supreme Court of the United States in the *Myers case*, I had the leisure and opportunity to examine more thoroughly the history and jurisdiction of the Comptroller General's office and after the decision was handed down in the *Myers case* I stated in an article in the *New York Times*, Sunday, November 7, 1926, that the decision did not necessarily include legislative agents of Congress, who are not in strictness executive officers and therefore not removable by the President and I added that among such limited class of officers "the Comptroller General is regarded as the special representative of Congress in seeing that its appropriations are faithfully disbursed."

My further study and reflection and especially my service in the House of Representatives have convinced me that my first position in this matter was unsound and that it is necessary, to prevent irresponsible spending of public funds, that the Comptroller General be responsible only to Congress. Congress has the power over the public purse. It is its greatest power, and in the history of the English-speaking race, it has been a most potent one, not merely in safeguarding the Commonwealth but the liberties of the citizen. To enable Congress to retain full control over the public purse, it must have its own appropriate agency. That agency is the Comptroller General and he must be independent of the Executive.

This method—so consistent with the best traditions of the English-speaking race—has been admirably vindicated by its results. No scandal has ever besmirched the office of Comptroller General and there would be fewer suggestions of favoritisms and scandals in the bureaucracy, if the Comptroller General were given more power.

## CHAPTER XIV

### BUREAUCRACY AND THE POWER TO TAX

"There is only one commission to which delegation of that authority [the power to impose import duties] can be made. That is the great commission of their own choosing, the Congress of the United States and the President. It is the only commission which can be held responsible to the electorate. Those who believe in the protective tariff will, I am sure, wish to leave its revision at the hands of that party which has been devoted to the establishment and maintenance of that principle for 70 years."—HERBERT HOOVER, October, 15, 1928.

OF all the bureaus, which exist in violation of the letter, or at least the spirit, of the Constitution, there is none that is comparable with the Tariff Commission, but the operations of this Commission, since it was reorganized in 1922, have been so innocuous that little attention has been paid to its constitutional aspects. There had been prior to the World War a Tariff Commission, but it was merely an advisory body to aid Congress and as such it was unobjectionable.

Our form of government has undergone more destructive change in the last ten years than in any previous decade, unless we except that between 1860 and 1870. Of all the many changes, which could be readily cited, two stand out as conspicuous examples of a betrayal of the basic principles of government as declared in the Constitution.

The discussion of one of these is not within the scope of this book, as it has nothing to do with the subject of bureaucracy.

The author refers to the unprecedented action of the Senate, when it refused to admit two Senators, one from Pennsylvania and the other from Illinois, each of whom had been indisputably chosen by the people of those States, respectively, by large majorities. It was not important, from a constitutional standpoint, that each of these Senators had been nominated by the Republican Party in a primary campaign, in which there were large and, it may

be assumed, unjustifiable expenditures of money. This could not alter the fact that after each had been nominated, the people of Pennsylvania and the people of Illinois, with full knowledge of the revelations as to the lavish expenditures in the primary campaigns, elected the two candidates by overwhelming majorities.

From the beginning of the government and until Senator Vare and Senator Smith were denied admission to the Senate, it had never been questioned that a Senator, who brought with him the certificate of election, signed by the Governor of his State and attested by its great seal, was at least entitled to take the oath of office and be thus given the right to defend his right to the seat from the floor of the Senate. If there be any exception, it was during the tragic days of Reconstruction, when men were excluded who had only recently been at war with the Government. In all the great crises of American history, especially those that preceded the Civil War, when passion ran high and great interests were at stake, it was never believed that the Senate could exclude a Senator, if he were duly elected, because in its opinion the Senator-elect was unfit for membership. Such a view would negative the express provision of the Constitution that Senators should be "chosen" by the States respectively, and not by the Senate.

As previously stated, this fatal blow to the authority and dignity of the sovereign States is not within the subject matter of this book, but if the reader is interested in the constitutional aspects of this controversy, he is referred to my book "*The Vanishing Rights of the States*,"\* in which the constitutional question was discussed, not only from the historic background of the Constitution and its unambiguous text, but also in the light of the precedents, which had been established for more than a century and all of which consistently justified the claim of these two Senators to the seats, of which they were deprived in a spirit of abject political cowardice.

This betrayal of a basic principle of the Constitution ran counter to the political traditions of the English speak-

\* *The Vanishing Rights of the States*, Doubleday, Doran & Company, Publishers, New York City.

ing race, for shortly before the Constitution was adopted the right of the English people to be represented in Parliament by representatives of their own choice had been vindicated in the memorable struggle of John Wilkes.

Even more hostile to the political traditions of the English speaking race was the creation of the Tariff Commission. The greatest battles of English liberty were fought around the question whether any tax could be imposed by any other body or officer than the legislative branch of the nation. One English King lost his head in trying to impose taxes without the consent of Parliament, and another lost his crown for the same reason. Indeed, the most glorious chapters of English history are those in which Eliot and Hampden battled for the exclusive right of Parliament to impose all taxes and were willing to lay their heads upon the block, rather than surrender the power of the Commons to decide the methods of taxation.

All this was familiar to the men, who framed the Constitution of the United States, and in conferring upon the new central government the right to impose taxes upon the American people, it was expressly provided that Congress should impose such taxes, and, to make "assurance doubly sure," it was further provided that "all bills for raising revenue shall originate in the House of Representatives." This provision was inserted because that body was the most directly representative of the American people. The principle was as old as English liberty. From the time of the Plantagenets and through the reign of the Tudors, the Stuarts and the Georges, the one consistent struggle of the English people was to prevent any imposition of a tax by the executive.

In the demoralization that followed the World War and when the currencies of foreign nations were wildly fluctuating, the Congress, to meet a temporary emergency in 1921, created the first Tariff Commission, with power to raise or lower duties within a statutory margin. From a pragmatic side, something can be said in defence of this measure. From a constitutional side, nothing can be said. The author says this with due recognition of the fact that the Supreme Court, in *Hampton v. United States*, 276

U. S. 394, with its consistent disposition to resolve all constitutional doubts in favor of congressional legislation, gave its pontifical absolution to this statute in a very unconvincing opinion. It felt constrained to accept assumptions of fact, which Congress had made, and upon these assumptions, none of which was found to be accurate in the practical trial of the law, the law was sustained. Unquestionably that opinion, which will prove a very fateful one in influencing further unconstitutional delegations of power by Congress, was influenced by the fiscal emergency, which then existed. The doctrine of emergency as a pretended justification of unconstitutional legislation may yet prove the "wooden-horse," whereby the citadel of the Constitution will be taken. Nothing is more discouraging than the disposition of the Supreme Court to justify socialistic legislation, on the theory that some alleged emergency excuses it. The epitaph of the Constitution may one day be "*Ilium fuit.*"

Encouraged by this decision, the theory of the flexible tariff, to be administered by a Tariff Commission appointed by the President and subject to his removal, became a pet child of President Hoover's, notwithstanding his clear statement to the contrary, which is printed as the heading of this chapter. He threw his immense influence, both as President and as an outstanding leader of thought, in favor of this surrender by Congress of its power to tax to an executive body. At all events, the flexible tariff law has not only been strengthened in favor of the Executive, but the Tariff Commission now seems a fixed institution in our constitutional system.

The reader should have a clear appreciation of what this means. Under the present law the Tariff Commission can, at any time, raise or lower any existing import duty to the extent of 50%. In other words, there is a margin of 100%, within which the power of taxation is vested in an executive body. The author recognizes that the Congress can, at any time, either repeal the law or substitute a new duty, but this is no answer to the constitutional objection. It cannot be, that, on any theory of constitutional law, a delegation by Congress of the power to tax is an exercise

by it of the taxing power. This greatest of all powers should not be delegated nor can Congress shift the responsibility, imposed upon it by the Constitution, of determining what taxes the American people shall pay.

Nevertheless, as the law is now and as it will probably remain, the Tariff Commission can raise or lower any existing tariff duty to the extent of 50% of the existing statutory duty. This means that the Congress only *nominates* a tax, or fixes it tentatively, and its practical consequences can be measured by a single illustration. If the tax on sugar happens to be 3¢ a pound—and the figure is only taken for purposes of illustration—the Tariff Commission, without any action by Congress, can either increase it to 4½¢ or reduce it to 1½¢. This would mean either an increase or decrease to the American consumer, in the cost of sugar, of 150 millions of dollars a year.

It may be suggested that there is this important difference between the English struggle to maintain the power of taxation in Parliament and the similar struggle in the United States, that in the former case an hereditary monarch sought to impose the tax and not Parliament, whereas under the flexible tariff laws it is a body of five men who, appointed by an elected President and with his approval, impose the tax. It may be suggested that as the President is elected by the people and appoints and can remove the members of the Tariff Commission, the two illustrations are not analogous. The answer to this argument is that the Constitution did not intend to vest the power of taxation in any one man, even though he be the President of the United States. Much less did it intend to vest the power of taxation in an executive body, as to which the President has both the power of appointment and removal.

In the 72nd Congress an attempt was made to restore the ancient liberties of the American people in this vital matter of taxation by making the Tariff Commission a purely advisory body to Congress. Unfortunately this attempt, which aimed to restore the Constitution in this vital respect, was coupled with other propositions, which seemed to many to be unwise. Nevertheless, the resolu-

tion to return the power of taxation to the Congress was passed by both houses and only failed to become a law, because less than two-thirds of both houses voted to override President Hoover's veto. Nothing is more suggestive of the enthronement of bureaucracy in America than this unconstitutional creation of the Tariff Commission, and nothing better illustrates that want of constitutional morality, which alone can save any written constitution, than the fact that the business interests of this country failed to see the great principle involved and supported the Tariff Commission on the grounds of practical expediency.

Even in this respect, which is wholly irrelevant to the constitutional question, the business interests were, as they so often are, short sighted. For the most part they favor high tariffs in protection of American industries, but they could not see that the Tariff Commission is the greatest potential menace to the protective tariff that could be devised. Should a low-tariff President be elected and with him a Congress in sympathy with his views, the Tariff Commission can quickly reduce every import duty to the extent of 50%, and in many cases that would mean a revenue, and not a protective, basis.

However, the relative advantages and disadvantages of the Tariff Commission from a pragmatic standpoint are quite beside the question of constitutional power. As previously stated, the Tariff Commission has been so innocuous in its practical workings that this crowning achievement of bureaucracy in the federal government has not attracted the attention which it deserves. To the thoughtful student of our history it seems to be the very capstone of bureaucracy to enable five men, called a Tariff Commission, to determine that a tax duly imposed by Congress, is either too high or too low. Of all the transfers of legislative power to the executive, none in principle is so glaring and indefensible as the transfer of the greatest and most sacred of all rights—that of taxation—to an executive bureau.

## CHAPTER XV

### CONGRESS AND THE BUREAUCRACY

"Whenever the horse stopped (which it did very often) he fell off in front; and, whenever it went on again (which it generally did rather suddenly), he fell off behind. Otherwise he kept on pretty well, except that he had a habit of now and then falling off sideways; and, as he generally did this on the side on which Alice was walking, she soon found that it was the best plan not to walk quite close to the horse."

—ALICE IN WONDERLAND.

WOODROW WILSON, some forty years ago, when a graduate student, published a small book entitled *Congressional Government*, in which he vigorously urged the superiority of a responsible cabinet ministry over a congressional committee government. A distinguished and very capable representative from Massachusetts, Congressman Luce, in his book, *Congress, An Explanation*, has countered with a suggestion that the cabinet ministry form of government, as it has developed in England to-day, "is nothing but monarchy under another name, and pretty near absolute monarchy at that while it lasts" while under our form of committee government in Congress "every member has the chance to contribute toward good legislation" and "in the committee room may play a most useful part in constructive effort for the public good."

Controlling the cabinet ministers of England in matters of detail, the English bureaucracy generally dictates the bulk of the legislation enacted by Parliament. Representative Luce agrees with the Lord Chief Justice of England, who has stated his case at length in his book, *The New Despotism*. In my opinion our federal bureaucracy shapes, and generally determines, the administrative details of legislation, although the larger policies are at times shaped by Congress. The extracts, quoted elsewhere in this book from the late President Taft and from two of the annual messages of President Hoover to Congress, in which he admitted that it seemed impossible to reorganize the administrative branches of the government, because of

the hostility of those members of the bureaucracy whose positions would be affected by such reorganization, go far to support this contention. How is this possible when we have 435 members of the House and 96 members of the Senate? The question must be considered in the light of the foregoing chapters of this book, with particular reference to the methods, by which the bureaucracy conducts itself in dealing with Congress. Members of Congress come and go, but the bureaucracy flows on forever.

As the members of the Senate and House are elected from the great body of citizens of the United States, they generally enter upon their duties with little knowledge of the technique of the federal government or even of the technicalities of parliamentary procedure in Congress. To gain knowledge of this requires some years of service, and representatives, with an absurdly limited tenure of two years, in which they are almost continuously concerned with their own renomination in the primaries and reelection, naturally gain the necessary knowledge very slowly.

Mr. Luce has correctly stated that probably nine-tenths of the work of Congress relates to the spending of money, the regulation of the processes and practices incident thereto, and to the formulation of laws for raising of revenues necessary to meet the authorized expenditures. Whatever may have been the experience of the members of the Senate and House in private life, such experience affords little assistance necessary to a wise and proper conduct of public finances. Mr. Luce has stated in *Congress, An Explanation*:

"In Washington the battle over economy is not between the President and Congress, but between the President and his administrators. Each head of a department or bureau has an honorable and laudable ambition to advance the interest that is his chief concern for the time, or indeed may be his life work. Inevitably he seeks for more power, and that means more helpers and more money."

Ex-President Taft, said in his book, *The Chief Magistrate and His Powers*,

"Now not only is Congress unlimited in its extravagance, due to the selfishness of the different congressional constituencies, but Congress as a whole and each House as a unit have by committee government deliberately parted with any actual efficient control of the total annual expenditures from the public treasury. Nor has Congress earnestly cooperated in the past with the Executive in efforts to secure a more economical organization of the government and the elimination of duplication of functions and greater saving and efficiency in the departments."

Each of these statements, while seemingly inconsistent, is true in part, although I question the Luce statement that the battle for economy is between the President and his administrators, rather than between the Congress and the administrators, especially since the establishment of a budget system, which President Taft had recommended, and President Harding finally secured.

It must be admitted that the sole and exclusive power to appropriate money is vested in Congress under Article I, section 9, of the Constitution, and that all money bills must originate in the House of Representatives, though the Senate early in the history of the Government asserted and has maintained a right to amend money bills, which made this feature of the Constitution almost futile. The debate in the Constitutional Convention in 1787, and the text of the Constitution, make it clear that the framers expected that Congress, and particularly the House of Representatives, whose members are required to be elected every two years, should act as the guardians of the public money and keep both appropriations and taxes down to a minimum, consistent with good government. Instead, Congress has spent money like the traditional sailors on shore leave.

This expectation has been defeated for three principal reasons: (1) The pressure of self-interested groups on the constituencies of members of both the Senate and House; (2) the pressure of the bureaucrats, the subordinates of the President, on members of Congress; and (3) the inexperience of so many members of both Houses of Congress in the problems of public finance.

Since the adoption of the Budget System in 1921, there has been organized in the House of Representatives a large Committee on Appropriations and there is a similar committee in the Senate. It is not possible for the entire committee to conduct hearings on the appropriation bills for each of the departments of the government and one for the independent establishments. The procedure has been adopted of assigning to subcommittees, consisting of a few members, the authority and duty to conduct the hearings and report back to the full committee. Unless the members have been in the Senate or House for many years and have served on the respective appropriation committees, they know little about the actual needs of the many departments and bureaus for public funds. Examinations and hearings are held by the Budget Bureau before the Budget is sent to Congress, but since the employees of the Budget Bureau are also a part of the bureaucracy, the information furnished by the Budget Bureau is not disinterested.

It is true that the Budget is annually transmitted to Congress by the President, but he has neither the time nor opportunity to make any first-hand examination of the needs of the far flung activities of the various departments and 150 bureaus under his control; the most that any President can, or has done since 1921, is to order the total of the items contained in the Budget to be held at a certain amount. This involves a more or less arbitrary deduction from such items as may have been requested by the various departments and subsidiaries. As neither the President nor the Budget Bureau has any constitutional power to make appropriations for the support of the government, Congress is responsible, but the problem is so large and complex that it can only function through

the committee system. Generally, the decision of the Committee on Appropriations is final.

There are certain fixed charges, such as the interest and sinking funds for the public debt, which may be easily computed. As to the remainder of the huge sums requested, Congress must, or should, obtain the necessary facts to justify the appropriations reported back to Congress for passage or approval in the various appropriation bills.

Here begins the functioning of the subcommittees of the Committee on Appropriations in the House. The first witnesses called on to testify are not the Director of the Budget Bureau nor his employees, who examined and included the respective items in the Budget for the approval of the President nor the President who approved them. Naturally the President never appears before committees, and rarely, if ever, have the Director of the Budget Bureau or his employees been called upon to testify. The Comptroller General or his employees could be called by either the full Committee on Appropriations or any of its subcommittees to give information as to the limitations with respect to the expenditure of prior appropriations, but this has happened rarely, and yet such information would be of value.

Instead of these subcommittees ascertaining what was done with appropriations for prior fiscal years and the reasons which actuated the Budget Bureau in submitting such estimates of appropriations, the subcommittees begin and usually conclude their hearings by the testimony of members of the bureaucracy, who either themselves spend the appropriations or have immediate supervision of their associates, who use the appropriations. Remembering that the members of the subcommittees do not have intimate first-hand information of all or any considerable part of the activities under a particular department of the government, such members are unable to cross-examine adequately the representatives of the Departments, appearing before them, as to the many items set forth in the Budget and thus it happens that a Committee hearing on an appropriation bill becomes more or less a field day for

the bureaucracy, unless some member of the Committee has supplied himself with sufficient facts to justify a searching examination. Such a member, as the late Martin Madden of Illinois, is worth his weight in gold to the United States.

Not infrequently members of Congress, who are not members of the Committee on Appropriations, appear before the subcommittees, urging appropriations to dredge a river or a section thereof, build a dam, or public road, establish an experiment station, or what not at public expense in their congressional districts, and only too often the electorate in a congressional district vote for or against a member, who is seeking reelection, according to the amount of public money he has been able to secure for expenditure in his district. However, this practice is less than in the days of President Taft and since the creation of the Budget. Interested groups often appear before the Committee on Appropriations, insisting on larger appropriations for the support of a particular bureau, in which they are interested, and bring pressure, bordering on intimidation, on recalcitrant members of Congress. Many extravagant appropriations could have been obtained in no other way, as for example, for the enforcement of a prohibition law which does not prohibit, or the increase in about ten years of the appropriations for the Bureau of Foreign and Domestic Commerce from less than one million dollars to more than five times that amount. All interests are represented except the taxpayer.

In such matters few members of either House of Congress have the courage to declare, as did Senator James A. Reed of Missouri in an address of June 29, 1921, in the Senate, that: "Notwithstanding all the votes pledged, the influence of an active lobby, and the false propaganda disseminated country-wide and at Government expense, I intend to analyze this bill and to give frankly the reasons for my opposition."

It is no indictment of either the ability or devotion to duty of the members of the House of Representatives that during a few years' service they are unable to get the real facts from the bureaucracy and the interested groups

supporting them and they vote for appropriations accordingly, especially when such members must campaign every two years for nomination and reelection and are expected to do everything, from furnishing passes to visit certain rooms of the White House to running errands to the various departments and minor bureaus of the Government. "The old flag—and an appropriation" is the spirit of many representatives, one of whom boasted that he had never voted for a tax, nor against an appropriation. It is impossible for a member of Congress to make an individual study of appropriation bills. In this, as in other respects, it may be feared that the Federal government has grown too large to be workable. It is slowly breaking down under impossible burdens.

One method of mitigating the evils of extravagance has been suggested. Congress has as its agent in the control of appropriations the Comptroller General of the United States, with a force under him of approximately two thousand attorneys, accountants and clerks, through whose hands pass every contract and the evidence of every payment made on behalf of the United States. Daily, year in and year out, they are required to refer to the terms of appropriation acts, hearings before the committees, the basic statutes, rules, and regulations of the departments to see whether the particular obligations are authorized by law; and whether contracts are legal and payments due under such terms of such contracts. It may be questioned whether there are any better trained employees in their very practical knowledge of the appropriation acts. They are not especially interested in any Department but are the clearing house of all, and they are solely responsible to Congress. The statutes make their services available to the committees.

Thus the subcommittee, later the full committee, and Congress could be fully advised as to the actual facts with respect to the uses of prior appropriations and as to the proposed uses of the appropriations under consideration and the committees could add such further restrictions or liberalizations of the uses of the appropriations as would accomplish the objects of Congress. Then, too, such

procedure would greatly relieve the overworked Committees on Appropriations.

It is proper to note in this connection that even if the House Appropriations Committee under the present procedure succeeds in detecting such facts as may justify a reduction in appropriations, the bureaucrats transfer their activities to the Appropriations Committee on the Senate side of the Capital, and not infrequently they succeed in cancelling the wise action of the House. Such efforts are not always successful but the possibility is always present.

The problems of the appropriation committees of the two Houses of Congress are further complicated by the fact that each House has committees for the principal departments of the Government, such as the Committee on Post Office and Post Roads, Committee on Military Affairs, Committee on Naval Affairs, Committee on Agriculture, etc., which work independently of the Appropriation Committee. There are also a few committees, not representing any departments but certain groups, such as the Committee on Labor and Committee on Veterans' Affairs. The legislative problems of the several departments of the Government, exclusive of appropriations, are referred to the committees for their respective departments, and the members of the committee listen with respectful attention to the recommendations of the bureaucracy for new legislation or for increase in authority under old legislation. While the Appropriation Committees are placing restrictions on the uses of appropriated moneys, the legislative committees are recommending legislation, which frequently seeks to confer more and more discretion on the bureaucrats—nullifying to a large extent the work of the appropriation committees. The bureaucracy of a department is keenly attentive to the supposed wishes of the members of the committee, having in charge its department and it is no unusual situation for a member of such a legislative committee to believe that it is his right and duty to support the demands of the bureaucracy of the department under his charge with little or no investigation. There are many statutes, orig-

inating with favoring reports from such legislative committees, which surrender the jurisdiction and authority of Congress to such departments and even go so far as to make the decisions final and conclusive, either as to all questions arising under the particular statute or at least over all controverted questions of fact arising thereunder. This phase of the matter has been discussed in a previous chapter, where attention was invited to some of the instances where the bureaucracy was legislator, judge and jury.

The minor committees of Congress are generally less experienced than the members of the appropriation and finance committees. Naturally, many of the older members in point of service in Congress seek membership on one or the other of these two committees of their respective Houses, with the result that, except for the Chairmen and perhaps two or three other members, the less important committees have less experienced personnel than either the revenue raising or the appropriating committees.

Comparatively few of the bills considered by these respective legislative committees are drafted by its members or by other members of Congress. The bulk of such legislation is either drafted in whole or in part by the bureaucracy of the particular department concerned or by special interests, and then given to some member to introduce in Congress for reference to the appropriate Committee. Thereupon, the bureaucracy of the particular department and all the outside assistance which may be mustered in its support, appear before the committee and urge favorable action on the various features of the bill. After the hearings are over, the bureaucracy is given an opportunity to "revise" its oral testimony before many of the Committees and sometimes the "revised" testimony, which comes back to the Clerk of the Committee for printing, has been revised beyond recognition. Statements made in the oral hearings, which do not look well in cold type, are modified or entirely stricken out and other language substituted. If a member of Congress happens to draft and introduce a bill decreasing the authority of the bureaucracy, the bureaucracy and its friends appear in full force against the proposed invasion of their jurisdiction.

Instances could be readily given, where executives have telegraphed contractors, engaged in the performance of contracts, and urged them to assist in either amending or killing a proposed act to limit the authority of such executives. A President may urge in his annual messages legislation for reorganizing the administrative service, and when bills are introduced for that purpose, members of his own Cabinet may appear before the committees in opposition, while their subordinates do not hesitate to attempt to use their acquaintance with members of Congress in attempting to prevent the passage of the bills thus recommended by the President.

This procedure is typical of much of the legislation before Committees of Congress, whether concerning appropriations or basic legislation. The members of the particular committee having a pet bill in charge are deluged with letters and telegrams, urging either the enactment or defeat of the bill, generally the enactment of the bill, for the individuals who are opposed to the legislation are not often organized and they are unable for financial or other reasons to appear personally or to employ others to appear in opposition to the legislation.\*

Wherever there has been waste, fraud, or extravagance in the administrative expenditure of public money, in the disposition of public property or invasion of private rights, the source can be traced to some of these legislative committees, which failed to secure the necessary legal advice from their own agents and favorably reported bills giving the bureaucracy unlimited discretion. Thus bills were enacted into law in defiance of an universal principle of

\* As an illustration, Mr. Cochran, Chairman of the Committee on Expenditures in the Executive Departments, who was elected from the city of St. Louis, stated from the floor of the House on February 23, 1932,

"My purpose in rising here this morning, however, is to direct the attention of the Members to what is going on behind the scenes. The official spokesman in this House of the President on matters affecting appropriations, Mr. Wood, of Indiana, told us last week that he was authorized to say that the President stood squarely behind appropriations below the estimates of the Bureau of the Budget. That was most pleasing information, but at the time Mr. Wood was making this statement we find the Secretary of Agriculture and his aids before the Senate Committee on Appropriations, making an argument which resulted in that committee eliminating from the agricultural appropriation personnel by preventing the filling of vacancies and preventing promotions which would have saved the Government millions of dollars."

public law that such unrestricted discretion should never be granted to any public officer. Individuals who have important business with the Government, should have an opportunity, except in a few special cases involving strictly the conduct of foreign affairs, to take their cases to Congress, either through the Comptroller General or the courts, or both. The reasons for this conclusion are stated in a preceding chapter and it is sufficient to add here that the American taxpayers should not be made responsible for the errors of judgment, resulting in a system of waste, extravagance or fraud, which has made our annual expenditures over four billion dollars. Moreover, the barn door must be locked before the horse is stolen, and not afterwards. Our Government needs more foresight, and less humiliating hindsight.

That the ever-changing Committees of Congress are not successful in thus locking the barn doors against the bureaucracy is demonstrated in the preceding pages of this book. It must be remembered that the chairmen and majority of the members of the various committees are members of the majority of the political party in power in both or either House of Congress, and that the members of the Cabinet with their immediate assistants, together with the President, are generally, though not always, members of the same political party. It is quite difficult in such event for the Chairmen and majority members of Congress to oppose the wishes of the President and his Cabinet members.

Some relief from the present intolerable situation could be obtained by creating a Committee on Congressional Powers in both Houses, to which would be referred all bills originating in the various other Committees. It would be the duty of this Committee to examine all of the bills to see that the constitutional powers of Congress were not surrendered. Except as to the administrative features, this Committee should have no control over the legislation or the policy included therein. Such a Committee should be bi-partisan and composed of the ablest and most experienced members of each house. The present Committee on Rules controls the calendar and procedure but does not

render the service which such a super-Committee could render. In the English House of Commons the members of the minority parties are the majority on the Committee on Accounts to criticise any expenditure of public money. The idea is admirable in theory but it may be doubted whether it would work successfully in the United States.

It is a singular fact that though Congress was organized in 1789 under a written Constitution, and both Houses have had, and still have, numerous committees to look after the interests of the various administrative branches of the Government, neither House has to this day organized a Committee to consider the constitutional power of Congress and to call the attention of the membership of the two Houses to any proposed law, which is in violation of the Constitution and therefore *ultra vires*. The Federal courts have taken the position that when Congress has vested "final and conclusive" authority in some administrative officer, however subordinate, they will not review his decision in the absence of fraud or such gross mistake as amounts to fraud.

In the days of Webster, Clay, and Calhoun, the constitutionality of any proposed statute might be debated for days and even weeks, but not so at the present time. In the House a few hours at most, to be divided in ten or twenty minute intervals between supporters and defenders of the legislation, are set aside for such debate and a member cannot even develop his theme, much less intelligently debate it, in such a short period of time. Also, the burden of committee work is such that for weeks a member of an important Committee may be unable to do more than appear on the floor for a short time. The remainder of his time and energy must be devoted to hearing arguments of the bureaucracy and its supporters or opponents for additional grants of public money or for further surrenders of legislative authority and jurisdiction.

The most that any member can generally do is to support or oppose the reports of the various committees and try to accomplish some constructive work on his particular committee. His support or opposition must be on the most general and broad principles and it is often physically

impossible for him to familiarize himself even with the basic principles of the legislation placed before him suddenly with a few hours for debate.\*

The House of Representatives can never regain its lost prestige as a legislative body until its membership is reduced to about 200 members, and their tenure increased to at least four years. Even then the committee system is inevitable but Congress should further develop the office of Comptroller General and make it a real auxiliary to Congress, not merely in controlling expenditures but in formulating fiscal legislation. Above all, there should be a revival of that jealousy of the rights of the people, so much in evidence in the Continental Congresses, the Congress of the Confederation, and the early Congresses under our Constitution. Otherwise, our form of Government will disintegrate and become less and less representative, as the bureaucracy completes its conquest of a constitution, whose ideal once was that it was for, of, and by the people.

To prevent this, the people must reform themselves. Once they prided themselves upon the fact that they lived under a benign and free government. Today, many are indifferent to the fate of their Constitution. To them, Government is an agency to live *on*, and not *under*.

\* Attention is invited to an address made February 12, 1932, by former Governor, and now Congressman Montage of Virginia, wherein he said, among other things,

"Many of us stand here day by day crowded with letters, oppressed with propaganda, hardly able to find 10 uninterrupted minutes in any day in which to study any governmental subject, with department work which makes almost every Representative a slave, with all the modern appliances of American ingenuity and mechanism, if you please—telegraph, telephone, and what not—to press and press and drive us on to a conclusion, which sometimes, if we were independent, we know we would not do. So I have seen some of these so-called lame ducks, if I may repeat an expression which I did not intend to use when I did use it, I have seen them run farther and farther than they did before they ever became lame."

## CHAPTER XVI

### BUREAUCRACY AND THE STATES

"It is not by the consolidation or concentration of powers, but by their distribution, that good government is effected. Were not this country already divided into States, that distribution must be made that each might do for itself what concerns itself directly, and what it can so much better do than a distant authority. Every State is again divided into counties, each to take care of what lies within its local bounds; each county again into townships or wards, to manage minuter details, and every ward into farms, to be governed each by its individual proprietor. Were we directed from Washington when to sow and when to reap, we would soon want bread. It is by this partition of cares, descending in gradation from general to particular, that the mass of human affairs may be best managed for the good and prosperity of all."—THOMAS JEFFERSON.

WHILE our Constitution is nominally our chart of Government, yet, as previously shown, powers are daily exercised by our Government, for which no authority can be found in the Constitution and by these usurpations of power, the long arm of federal bureaucracy is slowly destroying the once proud consciousness of the States and invading their reserved fields of power.

During the Constitutional Convention, when the New Jersey and Virginia plans were under consideration, James Wilson stated on June 18:

"I do not apprehend that the General Government will swallow up that of the States—the States and their separate governments must be preserved—they will harmonize with the General Government."

On June 20 Mr. Madison said that:

"The history of the ancient confederacies proves that there has never been danger of the ruin of State governments by encroachments of the General Government, but the converse is

true. I have therefore been assiduous to guard the general government from the power of the State governments. These governments regulate the conduct of their citizens, punish offenders, cause ordinary justice to be administered and perform acts which endear the government to the people, who will not suffer the General Government to injure the State governments."

These predictions of two exceptionally far-seeing men have been falsified by events. The States have not absorbed the Federal Government, but the latter is slowly reducing the former to the ignoble status of police provinces.

After the formulation of the Constitution and while it was under consideration in the States for ratification, the Federalist papers were published by Madison, Hamilton, and John Jay, and in No. XVII, probably written by Hamilton, we find a denial that the adoption of the Constitution would render the Federal Government too powerful. He answered the argument to the contrary, as follows:

"Allowing the utmost latitude to the love of power which any reasonable man can require, I confess I am at a loss to discover what temptation the persons intrusted with the administration of the general government could ever feel to divest the States of the authorities of that description. The regulation of the mere domestic police of a State appears to me to hold out slender allurements to ambition. Commerce, finance, negotiation, and war seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought, in the first instance, to be lodged in the national depository. The administration of private justice between the citizens of the same State, the supervision of agriculture and of other concerns

of a similar nature, all those things, in short, which are proper to be provided for by local legislation, can never be desirable cares of a general jurisdiction. It is therefore improbable that there should exist a disposition in the federal councils to usurp the powers with which they are connected; because the attempt to exercise those powers would be as troublesome as it would be nugatory; and the possession of them, for that reason, would contribute nothing to the dignity, to the importance, or to the splendor of the national government.

But let it be admitted, for argument's sake, that mere wantonness and lust of domination would be sufficient to beget that disposition; still it may be safely affirmed, that the sense of the constituent body of the national representatives, or, in other words, the people of the several States, would control the indulgence of so extravagant an appetite. It will always be far more easy for the State governments to encroach upon the national authorities, than for the national government to encroach upon the State authorities. The proof of this proposition turns upon the greater degree of influence which the State governments, if they administer their affairs with uprightness and prudence, will generally possess over the people; a circumstance which at the same time teaches us that there is an inherent and intrinsic weakness in all federal constitutions; and that too much pains cannot be taken in their organization, to give them all the force which is compatible with the principles of liberty."

All this seems very acute and profound but Time has shown the folly of his reasoning. It is obvious that Hamilton had no conception of an Eighteenth Amendment, which would usurp the police powers of the States in as intimate and personal a matter as the right of an individual

to take a glass of wine and would employ thousands of federal agents to arrest, indict and convict American citizens for the violation of this Amendment to the number of over 50,000 a year.

Hamilton in a subsequent paper, *Federalist No. XXXI*, returned to this subject and with less positiveness reargued the proposition that the tendency would be for the State governments to prevail over the National government, but he more accurately recognized that his reasoning was mere conjecture and that aside from the written terms of the Constitution, the matter "must be left to the prudence and firmness of the people; who as they will hold the scales in their own hands, it is to be hoped, will always take care to preserve the constitutional equilibrium between the general and the State Governments." The States have sold their birthright for a mess of pottage.

Unhappily, this hope has been falsified by events. These great men did not anticipate, and could not, the centripetal effects of steam and electricity and the welding influence of a mechanical civilization. They were to be confounded by Fulton, Stephenson, Morse and Bell. Even had we remained in the pastoral-agricultural age, in which the Constitution was framed, the same result would have come, for as the federal government grew in the imagination of Americans, the States would wane, for imagination rules the world.

As a giant slowly awakening to the fact that he possessed unusual strength, so the Federal bureaucracy slowly realized that it possessed a method of regulating the habits, and lives of the people of the States. Originally, it was flagrant usurpation. The present method is more insidious. It bribes the States by federal subsidies to acquiesce in greater federal powers, and the consequent surrender by the States of their reserved powers. One of the earliest was a subsidy made during the early days of the Civil War in the act of July 2, 1862, 12 Stat. 503, granting to the several States public lands in a quantity equal to thirty thousand acres for each Senator and Representative in Congress from that State or if there were no public lands in the State, then scrip in lieu thereof, entitling the pur-

chasers to certain public lands in other States. A minimum price was fixed to be realized from the land and there were directions for the investment of the fund, the capital of which was to remain forever unimpaired. It imposed upon the recipients conditions as to the educational uses of such gifts as follows:

"The interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts."

There were certain other burdens placed on the States in event they accepted the grant of lands and by the act of August 30, 1890, 26 Stat. 417, provision was made for an annual grant of money to the States for a part of the support of agricultural and mechanical colleges, and these amounts have been increased from time to time. An officer of the Army and sometimes several are assigned to these many land grant colleges for the purpose of training the students in military science and tactics, with provision more recently made for commissioning graduating students, taking the four-year course, as second lieutenants in the Reserve Corps of the Army. Many of the States maintain these agricultural and mechanical colleges and give the course in military science and tactics. Annual reports are required and inspections made so that the Federal bureaucracy may be fully informed in these matters relating to the education of the young men of the various States.

The bill, which in a modified form became the act of 1862, was introduced in Congress in 1857 by Justin S. Morrill, an able Senator from Vermont, and it raised a veritable storm of protest. Clay of Alabama declared that

"This bill treats the States as creatures, instead of creators, and proposes to give them their own property and direct them how to use it."

Senator Mason of Virginia said that the bill

"is using the public lands as a means of controlling the policy of the State legislatures. . . . It is an unconstitutional robbery of the Treasury for the purpose of bribing the States. Suppose the bill was to appropriate eight or ten million dollars from the Treasury for the purpose of building up agricultural colleges in the States, would honorable Senators who patronize this bill vote for the appropriation; and if they would not, why not? If they have the power to do it, and they believe it expedient to do it, why would they not as well take the money from the Treasury to build up agricultural colleges, as to take public land? It requires no prophet, it requires none particularly conversant with the workings of any government, more especially this, to see that in a very short time the whole agricultural interests of the country will be taken out of the hands of the States and subjected to the action of Congress."

What Senator Mason prophesied has actually come to pass, for the act of May 8, 1914, 38 Stat. 372, "permanently appropriated" from the Federal Treasury the sum of \$480,000 to be paid in the amount of \$10,000 to each State and a further sum, which was to grow to \$4,100,000 at the end of the seventh year, to assist in the maintenance of cooperative agriculture extension work at these land-grant colleges, with the string tied to the grant, which was accepted by several States, that the—

" . . . cooperative agricultural extension work shall consist of the giving of instruction and practical demonstration in agriculture and home

economics to persons not attending or resident in said colleges in the several communities, and imparting to such persons information on said subjects through field demonstrations, publications, and otherwise; and this work shall be carried on in such manner as may be mutually agreed upon by the Secretary of Agriculture and the State Agricultural College or colleges receiving the benefits of this act."

These grants in aid of education in the various States represent but a small part of the cost to the States of the education of their people, but in order to obtain the grants for specific purposes the States are obliged to permit the appropriate bureau of the Interior Department, Agricultural Department, and the War Department to have a large measure of control and direction of such education.

An extract from an address delivered May 10, 1924, in the House of Representatives by Henry St. George Tucker, a distinguished scholar and Virginian, and the son of an equally distinguished father, may be profitably quoted. Mr. Tucker was speaking against a proposition to authorize an appropriation of \$1,000,000 a year for four years to match appropriations of the several States for vocational rehabilitation of persons disabled in industry. Mr. Tucker's entire address on that occasion is worthy of attention, but space will not permit more than the following paragraph:

"The bill under consideration is one affecting the restoration to health of some people of the country. An examination of the Constitution will show no grant of power to the Federal Government to legislate on this subject, and therefore it is a question which belongs to the States. But this bill seeks in a benevolent way to appropriate money to help the States in this work by appropriating one dollar for every dollar the State expends for this purpose. If it is a Federal function, why should not the Federal gov-

ernment do it all? If it is a State function, why does not the State do it all? Why should the two governments do the same thing at the same time, when only one can legally do it, and when the cost of having two overhead charges, with all that that means in rents, employments, medicines and so forth, must be greatly increased? No business man would ever run his own business on any such plan. He would be hopelessly lost. The double cost of such a course is not only evident in these respects, but how does the Federal Government get the money to pay its part? Only by taxation of the people of the States; and see what that means: An army of revenue agents covering the States to collect taxes to bring to Washington, and put it in the Treasury, and another army of employees put into the Treasury and other great buildings to send the same money back to the States where it came from. With these two great armies to be fed and supported, the money collected from the people of the States, brought to Washington, and sent back to the States for purposes like this never gets there; it is eaten up; and yet that is the business proposition of this system."

Bureaucracy is indeed too firmly intrenched in Washington, as Mr. Tucker said in the same address, "to be ousted or controlled by an occasional struggling patriot," and notwithstanding his sound and eloquent address, the bill was passed in the House with 61 ayes and 16 noes—a mere handful of the members of that body. These appropriations are generally made by minorities.

For the fiscal year 1932 Congress appropriated \$99,380 for the salaries and expenses of the Board for Vocational Education, with \$1,097,000 for Cooperative Vocational Rehabilitation of persons in industry, the same proposition which Mr. Tucker decried eight years before, and a further sum of \$77,860 for the salaries and expenses of

Federal employees engaged in cooperating with the States in this work.

In addition to these large sums, Congress appropriated two items of \$1,430,000 and \$62,806.43 for cooperative vocational education in agriculture, trades and industries, home economics, and teachers. Under permanent specific appropriations a further sum of \$7,367,000 was appropriated for the purpose of cooperating with the States in paying the salaries of teachers, supervisors and directors of agricultural subjects, and teachers of trade, home economics, and industrial subjects as well as the preparation of teachers for such work. Even more noteworthy are the huge appropriations made in the Department of Agriculture appropriation act for the fiscal year 1932 for cooperative agricultural extension work in the sum of \$4,070,000; cooperative Farm Forestry in the amount of \$74,000; and permanent appropriation for cooperative agricultural extension work aggregating \$4,602,936. Indeed, if the Federal government has not bribed the States—in the language of Senator Mason—in taking over the agricultural interests of the country by means of these subsidies, it placed a blight directly on them by the Federal Farm Board and its two subsidiary corporations, already referred to in a preceding chapter.

Not only have these Federal appropriations largely increased, but corresponding appropriations of the States have necessarily been increased in order to share in the Federal appropriation. Perhaps the American taxpayers could stand such a burden of taxation, but the equilibrium of power between the Federal and State Governments cannot stand the meddlesome activity of the Board of Vocational Rehabilitation and the Department of Agriculture, as their greedy fingers reach into millions of American homes, developing in the youth of the land the belief that they should look to the Federal, rather than to their State Governments. Even those inveterate political enemies, Thomas Jefferson and Alexander Hamilton, would agree that the Federal Government has today destroyed the proud consciousness of the States. To get a few millions they shamelessly barter away their birthright.

Reference has been made in a previous chapter to the success of the Children's Bureau in the Department of Labor in securing appropriations for the purpose of teaching mothers how to bear their children and to Senator James A. Reed's able address in opposition to the measure. Notwithstanding his opposition, the bill became law in the act of November 23, 1921, authorizing an annual appropriation of \$240,000 to be equally apportioned among the States and an additional sum of \$1,000,000 annually for a period of five years, to be apportioned among such of the States as would appropriate an equal amount to be used for the same purpose and under the supervision of the Department of Labor. In 1926, a bill was under consideration to extend the 1921 statute for a period of two years and this bill was also opposed by Senator Reed. He said on June 15, 1926, that this organization had been "nothing but a common and public nuisance, maintained at the expense of the United States" and that the vast authority contained in the 1921 act was:

" . . . vested in a board, and that board was to draw up rules and regulations, and no money was to be distributed to any State unless it adopted rules and regulations that were approved by that board. When we came to trace the Board down we found that every member of it save one was an unmarried woman; and, of course, eminently fitted to teach the real mothers of babies how they ought to rear their babies."

The United States Census Bureau report of 1925 shows that in the five States, which did not accept the Federal maternity act of 1921, but maintained accurate birth and mortality registrations, the death rate among children was lower than in the States which had accepted and operated under the maiden ladies' maternity act.

Apparently the estimable ladies, who conducted this maternity bureau, added little to the sum of human knowledge on the subject of the hygiene of maternity,

if we may credit the following statement of the *Journal of the American Medical Association*:

"During the seven and one-half years that the Sheppard-Towner Act was in effect, it cost the people about \$11,000,000 in taxes. During that entire time it did not develop a single new idea in the field of maternal and infant hygiene. As shown by official mortality statistics, it did not accelerate the rate of decline in either the maternal or the infant death-rates by even a fraction of a point *per annum*."

The State of Massachusetts was one of the five States, which never accepted the subsidy benefits and the State, as well as an individual, brought separate suits in the Courts of the District of Columbia in an attempt to enjoin Secretary of the Treasury Mellon and others from paying out any money under this act. The lower courts refused the injunction, and the State of Massachusetts took the case to the Supreme Court of the United States.\* This was during my service as Solicitor General of the United States, and I argued the case, principally on technical grounds. The Court sustained my position that the authority of Congress to make an appropriation for any purpose, whether constitutional or not, was not a controversy, which could be raised by either a State or a citizen of a State, though since the constitutionality of a federal statute was successfully challenged by the Executive department of the Government in the *Myers Case*, referred to in Chapter III of this book, it may be that the Executive could successfully challenge an unconstitutional appropriation made by Congress. However, the bureaucracy of the Executive branch of the Government evidences little interest in such matters except to secure as large appropriations as possible and as much authority as Congress will grant to expend the appropriations.

While the author had little sympathy with the policy

\* *Commonwealth of Massachusetts v. Mellon* and *Frothingham v. Mellon*, 262 U. S. 447, 489.

of the Statute, yet he argued it, as he was charged with the defense in that court of suits involving the United States and its officers. He did not regard it as his duty or privilege to confess error in an appellate court, and thus place his judgment against that of a duly constituted court, which had decided in favor of the Government. The opinion of the Supreme Court, sustaining the author's contention, only held that neither a State nor a citizen had a legal status to question the legality of an appropriation, not so much on theoretical grounds, as because of the impossibility of any judicial censoring of the appropriations of the federal government. The Court did not decide that the appropriation was a valid appropriation.

The greatest of these subsidy grants to the States on a cooperative basis is that for the construction of public roads. It amounted to \$159,000,000 for the fiscal year 1932, and in the present Congress an additional appropriation of \$135,000,000 was voted by the House.

This subsidy to the States has grown from a small seed planted in 1802, when Ohio was given five per centum of the net proceeds from the sale of public lands within her borders for the purpose of "laying out and making public roads!" Following this policy, Congress required in almost every instance prior to 1889 that the five per cent fund derived from the sale of public lands be devoted to highways or other permanent improvements.

An office of public roads was established in the Department of Agriculture to test road-building material, various types of roads, etc., and to impart such information to local road builders, but by 1912 the demand for good roads became such that some sixty-two bills were introduced in Congress granting further aid to the States in building roads. The House of Representatives gave this direct by including in the Post Office appropriation bill a subsidy in the form of rental of State roads used for postal purposes. The Senate did not agree to such a provision and it was lost in conference, but upon recommendation of the conferees a joint committee was appointed to investigate the entire problem of Federal aid in building post roads and as the result of such investiga-

tion an experimental appropriation was made of \$500,000 to the Department of Agriculture to aid in the construction of post roads. This provision was coupled with a requirement that "the State or local subdivision thereof, in which such improvement is made under this provision, shall furnish double the amount of money for the improvement of the roads so selected."

After several attempts to extend this aid, Mr. Bankhead, of Alabama, introduced a bill, which is reported to have been drafted by the National Association of Highway Engineers, and it became a law on July 11, 1916, and is the basis of the present law. A double limitation was placed on Federal aid, the contributions of the Federal Government being restricted to fifty per cent of the total cost of each project, and also to \$10,000 a mile, except in the case of bridges having certain dimensions.\*

This 1916 act authorized appropriations for five years, increasing annually by five million dollars until 1921, when a maximum of twenty-five millions was to be reached, but the Post Office appropriation act of 1919 contained important amendments to the 1916 Highway Act, increasing the appropriation by an additional two hundred million dollars, fifty millions being made available for the fiscal year 1919, and seventy-five million for each of the two succeeding years. This 1919 act went so far as to require some of the States to amend their constitutions if they were to share in the Federal funds. As above stated, the 1916 act permitted counties to match Federal funds when the State either did not, or could not do so on account of constitutional prohibitions, but the 1919 act required such States to amend their constitutions by striking out the objectional provisions under penalty of

\* It has been stated by Dr. Austin F. MacDonald, *Federal Subsidies to the States*,

"The Federal Highway Act of 1916, went farther than any previous subsidy law in prescribing the exact manner of spending federal allotments. Each State desiring to avail itself of the benefits of the statute was directed to submit to the Secretary of Agriculture, through the Highway Department, project statements setting forth the proposed construction of rural post roads within its borders, including all surveys, plans, specifications and estimates required by the Secretary. Projects meeting all federal requirements were to be approved by the Secretary of Agriculture, and federal allotments paid as construction proceeded, all work being done under the direct supervision of the State highway department, subject to the inspection and approval of the Federal Government."

forfeiting further Federal allotments of road funds. No other subsidy law had gone so far as to offer a bribe to the States to amend their Constitutions in conformity with the ideas of the Federal bureaucracy. Had these impetuous States had any of the pride that once characterized the States of the Union, they would have indignantly rejected a subsidy, which was offered on such humiliating terms.

The trend of the times since the days of Clay of Alabama and Mason of Virginia is shown by the fact that it was a Southern representative, who fathered the 1916 act, and no serious protest was raised in either House to the 1919 act. The demonstrable facts are that so far has the Democratic Party strayed from the teachings of Jefferson and Jackson that today democratic leaders of both Houses of Congress, like the white plume of the Prince of Navarre, have been far in the front of every struggle to consolidate the federal government and destroy the States by bribing the latter through subsidies to surrender their local self-government into the keeping of the Washington bureaucrats. The author says this with regret and without any spirit of partisanship. It is unfortunate that the Republic no longer has a party of strict construction to preserve the orbits of the States from invasion.

Assisting the bureaucrats in the Department of Agriculture and the members of Congress, who were willing to vote subsidies to "bribe" the States in the building of public roads, was the American Association of Highway Officials, composed of the administrative and executive officers of the highway departments of the several States, who have an office in Washington with an executive in charge. Quite naturally, the contractors, who were interested in contracts for building highways, gave their assistance and in 1921 Congress again amended the Highway Act of 1916 by dropping the obsolete term "rural post roads," which was only a pretence for violating the Constitution, and granting an additional subsidy of seventy-five million dollars with an increase of the ratio of Federal funds in some of the western States where there were public lands—mostly deserts unfit for cultivation—

and with definite authority in the Secretary of Agriculture (thereby meaning the Chief of the Bureau of Public Roads), not only to approve systems of State roads selected for improvement but to approve the material for their construction. The predictions of Senator Mason in 1857 with respect to the grants to agricultural colleges have become literally true with respect to Federal control over the roads of the States and every State in the Union has subscribed to this subsidy system of building public roads.

As already stated, in the present session the House of Representatives has voted another \$135,000,000 for road construction upon even more liberal terms.

In the summer of 1918, 40 Stat. 886, Congress appropriated \$4,100,000 for the prevention of venereal diseases with the provision that \$1,000,000 should be used for the purpose of "assisting the various States in caring for civilian persons whose detention, isolation, quarantine or commitment to institutions may be found necessary for the protection of the military and naval forces of the United States against venereal diseases," and the war had hardly closed when Congress provided in the World War Veteran's Act that a disabled member of the former war forces should be entitled to compensation, or a form of pension from the United States, even though his disability was one traceable to venereal diseases! The State allotments of this venereal disease fund were to be expended "in accordance with the rules and regulations prescribed by the Secretary of the Treasury" which, in actual practice, meant the Surgeon General of the Public Health Service and his assistants.\*

\* It is stated by Dr. MacDonald, *Federal Subsidies to the States*, that:

"The manner in which federal allotments were to be expended was not left to the discretion of the state boards of health, but was prescribed minutely by the Secretary of the Treasury. Half of the subsidy was to be used for the treatment of infected persons in hospitals, clinics and other institutions. Venereal disease carriers unable or unwilling to prevent themselves from becoming a menace to others were to be isolated and treated in detention hospitals. The free clinics established by the state boards were to secure data for enforcing the regulations concerning the reporting of infections. Twenty per cent of the federal grant was to be devoted to the carrying out of educational measures, which were to include the dissemination of information to the general public, as well as to infected persons, in regard to the nature and manner of the spread of venereal diseases and the measures that should be taken to combat them. Lectures, posters, pamphlets, moving picture films, lan-

In recent years Congress has paid a great part of the expenses of training and equipping the National Guard and has conferred on the War Department authority to require the officers to meet certain minimum qualifications before they may be recognized by our government. These expenditures are justified by Art. I, § 8 of the Constitution and are for the common defense. The States are not required to match these appropriations.

There are a number of isolated instances where Congress has from time to time granted subsidies to certain States in the form of public land for construction of capitol buildings, etc., but they are not of sufficient importance to justify any extended discussion. It is the principle with which we are now concerned, and the particular subsidies have been discussed for the purpose of illustrating that principle.

The great incentive and principal cause of these subsidies is the persistent desire of the smaller agricultural states of the South and West, with their wholly disproportionate representation in the Senate, to milk for the benefit of these sections the larger and wealthier industrial states. Hundreds of millions are thus appropriated for relief of the so-called "backward states," to use former Senator Grundy's apt term, because their representatives know that their people, while receiving *all* the benefit, will pay only an infinitesimal part of the cost. We know that less than 20,000 people, almost all of whom reside in the larger states, paid in the fiscal year of 1928 more than half of the income taxes and about 400,000 taxpayers pay substantially all. Many of these agricultural states thus draw from the Federal Treasury by direct subsidies from two to four times as much as they contribute. How long the American people will endure this rank injustice is an interesting subject for speculation.\*

tern slides and other graphic media were to be employed in spreading these facts. Another twenty per cent was to be used for repressive measures, such as the elimination of conditions favorable to the spread of venereal infections and co-operation with local civil authorities in their efforts to suppress public and clandestine prostitution. The remaining 10% of the federal subsidy was to be devoted to administrative purposes."

\* Dr. Abbott has well said in his book, *The New Barbarians*, that:

"The danger resolves itself to this, that the State itself may be undermined by the very taxes which support it. The social revolution goes on among us unchecked,

Any careful student of government must agree with the truth of this statement. The vast and vanished empires of the world have tottered and fallen because a new and more virile race of men arose, who did not tax the few for the benefit of the many and who did not shape their laws so that their bureaucracy could reach into every home in the land on some pretext to regulate and control not only the activities of the individual, but those of local governmental units.

The subtle effects of bribing the States or their people by means of Federal subsidies are now having their influence. Inexcusable demands are being made on members of both Houses of Congress which were unknown in the days of Webster, Clay and Calhoun. Thousands of people in every section of the United States are now demanding appropriations at the hands of their elected representatives in Congress, and various forms of assistance, which were unknown before the advent of these subsidies. Apparently, the only partial solution thus far suggested is to make the people "tax conscious" by broadening so far as possible the basis of taxation. This was the merit of the

almost unrecognized as such, however profoundly it affects our individual as well as our common destinies. Our working classes are learning to use and to demand a hundred things they never knew before. We rapidly approach equal pay for every kind of work, good or bad, skilled or unskilled. There are, as the humorist observes, 'too many new ways to spend money and not enough new ways to get it.' This is, of course, partly due to the increase of population and the necessity of a living for them all. It is still more due to the increase of luxury. But it is due also to the increasing complexity of life and the machinery called into existence by an age of machinery. Thus is the cost of business and the cost of life increased, despite all specious pleas to the contrary. It is expressed, above all these things, in taxation. And while some elements, the so-called 'profiteers,' gain under such a system, many more lose.

"The danger exists not only in the field of economics but in that of politics. That danger is greater because it is more insidious. Much of our recent taxation has three great evils ingeniously combined into one system. It is not merely excessive. It has led to ridiculous and pernicious extravagance in so-called public works and public service by the ignorant and incompetent or, still more, the self-seeking activities of local, state, and even national legislators. It has done much to increase the cost of life, to establish the vicious circle of higher wages to meet higher prices, and higher prices to meet higher wages. Worse still, it bears most heavily upon the class of relatively fixed and moderate income. It does not touch those below that scale, and in no inconsiderable degree it is evaded by men of large wealth, anxious and able to escape the punitive, even confiscatory taxes laid on them. Through the popular device of non-taxable securities, established in most instances by the very local and state authorities which increase the borrowings, the expenditure and consequently the taxes, of their communities, the burden is shifted from the shoulders of great holdings to those of the farmer, the small business man, the professional elements and the householders."

recently defeated sales tax and yet, although recommended unanimously by the Committee on Ways and Means and loyally supported by the leaders of both parties, the proposal was defeated because of its very equity and because it did not continue to "soak the rich." This spirit has marked the downfall of more than one proud and powerful Empire.

All the predictions of the framers that the States would surely preserve their own integrity have been falsified. All the fears of Chief Justice Marshall that the States would destroy the central government, which induced him to read into the Constitution the exemption of governmental securities from state taxation, have been found equally without foundation. The author once wrote a book called "The Vanishing Rights of the States." The title is incomplete. The title should have been "*The Vanished Rights of the States.*" They did not perish at Appomattox, as is sometimes claimed. The Civil War was fought to preserve "the indissoluble Union of indestructible States." The States survived, and even those States, which once sought to destroy the Union to preserve their independence, have now sold their sacred birthright for the mess of pottage of federal grants and aids. Lincoln endeavored to save the Union as created by the Constitution. Alas! for the hopes of men. The Constitution, in so far as it sought a wise distribution of power between the federal government and the States, has failed. It has been betrayed not only by the lust for power of the federal bureaucracy, but by the cupidity of the people of the States. Today they even crowd to the Halls of Congress to secure federal aid to relieve their own indigent. The proud consciousness of the States is gone and with it the essential principle of the Union.

## CHAPTER XVII

### BUREAUCRACY AND REORGANIZATION

" 'Now! Now!' cried the Queen. 'Faster! Faster!' And they went so fast that at last they seemed to skim through the air, hardly touching the ground with their feet, till suddenly, just as Alice was getting quite exhausted, they stopped, and she found herself sitting on the ground, breathless and giddy.

"The Queen propped her up against a tree, and said kindly, 'You must rest a little, now.'

"Alice looked round her in great surprise. 'Why, I do believe we've been under this tree the whole time! Everything's just as it was!'

" 'Of course it is,' said the Queen. 'What would you have it?'

" 'Well, in our country,' said Alice, still panting a little, 'you'd generally get to somewhere else—if you ran very fast for a long time as we've been doing.'

" 'A slow sort of country!' said the Queen. 'Now, here, you see, it takes all the running you can do, to keep in the same place. If you want to get somewhere else, you must run at least twice as fast as that!'"—ALICE IN WONDERLAND.

PRESIDENT TAFT, later Chief Justice of the Supreme Court of the United States, started the movement for reorganization of the administrative service of the United States, and the American people little realize his contribution to the cause of better and more economical government. At his request Congress made appropriations in the acts of June 25, 1910, and March 3, 1911, to enable him to inquire into the methods of transacting the public business of the various executive departments and other governmental establishments, and to make report as to improved efficiency and greater economy to be obtained in the expenditure of money for the maintenance of the Government.

Mr. Taft appointed a commission of six capable and experienced men to constitute his Committee on Economy and Efficiency. Among these men were Walter W. Warwick, who had served with Mr. Taft when he was a judge in Ohio, was later Comptroller of the Treasury, and had had many years of service in the Government. W. F.

Willoughby has been a lifelong student of governmental affairs, having served as auditor for Porto Rico, Financial Adviser to the Chinese Government, Director of the Institute for Government Research, and was a voluminous writer on problems of Government. A third member was Frank J. Goodnow, who is an author of a book on administrative government, professor of many years' experience, and vice-chairman of the Institute for Government Research. The other three men were also experienced in governmental affairs.

The immediate result of their labors was some four volumes of reports, statistics, and recommendations concerning needed improvements in government methods and procedures, which were transmitted to Congress by President Taft with a message of April 4, 1912. In the meantime there had been, unfortunately for his wise plans, a change in the control of the House of Representatives, and later the President, in *Our Chief Magistrate and His Powers*, published in 1915, said:

"I was much interested during my term of office in devising a system for the permanent promotion of efficiency and economy in the Government service. I induced Congress to give me \$100,000 a year for two years, to pay the expenses of an expert Commission, to examine the governmental business and make reports upon the changes needed by the introduction of modern business methods and economy, to enable the people to get more for their money. The reports that they made, by which they pointed out needed changes in our present system, including the budget, which I described in my first chapter, were not popular with Congress, especially not with the last Congress of my term. The necessary appropriation was withdrawn. The Commission, however, did a great deal of most useful work, and while the dust is accumulating on their reports at present, their investigations and conclusions were of

permanent value, and some day they will be made the basis for further investigations and for definite measures of reform."

The dust has long since accumulated on these reports but many of the reforms, so cogently urged by Mr. Taft and that Commission, have been enacted into law, though not in the exact form recommended. The greatest of these reforms was that established in the Budget and Accounting Act of 1921, creating a Budget Bureau, under the immediate supervision of the President to formulate and transmit to Congress a budget of the needs of the spending agencies of the United States. This act also took the accounting officers out of the Treasury Department, consolidated the accounting work in one office, known as the General Accounting Office, wholly independent of the spending agencies and responsible direct to Congress.

The Returns Office in the Interior Department, where the War, Navy and Interior Departments were required to file copies of their contracts with the advertisements and bids, was transferred from the Interior Department as recommended by Mr. Taft, but instead of creating similar offices in the various departments and establishments, such work was given to the General Accounting Office. The duplication and expense of maintaining separate offices in the various spending agencies has been eliminated, though there has not been accomplished the same degree of publicity for the contracts, advertisements, and bids received by other departments and bureaus of the Government.

Mr. Taft recommended uniform traveling expenses and subsistence allowance for the entire Government service, pointing out that there were many existing statutes, which made different allowances for various classes of employees in the departments and many offices of the Government when traveling on official business. A part of this recommendation became law in the Subsistence Expense Act of 1926, which established uniform subsistence allowances for the civilian employees of the Government and they are also entitled to their actual and necessary transporta-

tion expenses computed on the basis of first class fares via the shortest usually traveled route. Unquestionably, the various statutes concerning the mileage allowances of Army and Navy officers are in great need of revision and codification, which will doubtless be effected as soon as the bureaucracy of the War and Navy Departments may be brought to support such a measure.

The consolidation of the lighthouse and life-saving services and the transfer of the revenue cutter service from the Treasury to the Navy Department were not made as recommended by Mr. Taft. Instead, the life-saving service and the revenue cutter service were combined as the Coast Guard and permitted to remain in the Treasury Department. As stated by Josephus Daniels, former Secretary of the Navy, we now in fact have five navies, which are as independent of each other as they would be if they belonged to separate countries.

A number of other recommendations were made by Mr. Taft, which have not been enacted into law. He complained of the number of appointments, which the President is required to make for local offices and said that he had "several times called attention to the advantages to be derived from placing in the classified service the local offices under the Department of the Treasury, of the Post Office, of Justice, of the Interior, and of Commerce and Labor," and that an inquiry which he had caused to be made showed that a loss of at least ten million dollars a year was being sustained, where two persons were being paid for work which could easily be done by one and was generally done by the Civil Service subordinate, while the political appointee secured the larger salary for doing little or nothing. From time to time a number of these positions have been included in the Civil Service by Executive Orders, but it remains true today that United States Attorneys and their assistants, collectors of internal revenue, collectors of customs, and comptrollers of customs are political appointments and that in small localities their work is little more than nominal.

To some extent the difficulty in enforcing the many complex laws of the United States is due to the fact that

United States Attorneys and their assistants are too often political appointees. The President has been required to continue the appointment of United States Attorneys, who in turn appoint their assistants with the approval of the Department of Justice. These men scarcely have time to become familiar with their duties until their four-year terms of office expire. Those engaged in enforcing the law should be as little subject to pressure as the judges of the courts, and capable United States Attorneys and their assistants should be permitted to remain in office for many years, free of all political or other pressure. We could then expect a decided improvement in the enforcement of our laws. However, this book is not intended to deal with law enforcement, and those interested are referred to the enormous but unread tomes of the Wickersham Commission.

No subsequent President has attacked the problem of simplification and reorganization of Government with the vigor shown by President Taft, and none has shown any accomplishments along such lines comparable to those obtained as a result of the studies of the experts in Government under his supervision. President Wilson devoted little, if any, attention to that problem during his first administration, while the problems of the World War and his illness shortly after the actual close of hostilities to the end of his term prevented him from making any concrete recommendations in the matter, though Congress did consider, during the closing days of his second term of office, the creation of a budget bureau and the establishment of an independent office as a control agency over appropriations made for the conduct of the business of the Government and a bill was actually passed for that purpose.

However, President Wilson vetoed the bill because of his objections to the provisions in the bill, which prevented the President from removing either the Comptroller or Assistant Comptroller General. President Harding was soon inaugurated, the bill was repassed by Congress and Mr. Harding approved it in 1921. By a joint resolution of December 17, 1920, amended by a further joint reso-

lution of May 5, 1921, Congress created a joint committee, consisting of three members of the Senate and three members of the House, with a Chairman appointed by the President, to study the work of the various departments and establishments of the Government with a view to effecting consolidations and reorganizations. This committee made a report which was printed June 3, 1924, as House Document No. 356, wherein a number of reorganizations and consolidations were recommended.

The reforms urged by this joint committee in its report and draft of a bill were: (1) the establishment of a Department of Education and Relief to foster and promote public education and health and the interests of persons separated from the military and naval forces, to which should be transferred certain bureaus from the Interior Department, Treasury Department, and the independent establishments known as the Federal Board for Vocational Education and the United States Veterans' Bureau; (2) to transfer to the Department of Commerce the Bureau of Mines and the Patent Office, then in the Interior Department, the National Advisory Committee for Aeronautics, then an independent commission, the Lake Survey office, then under the jurisdiction of the Engineer Corps of the War Department, and the activities of the Inland Waterways Corporation, to which reference has been heretofore made; (3) the bill further proposed to create in the Interior Department a Bureau of Public Works, to which would be transferred all the construction activities of the United States pertaining to public roads, public buildings now in the Treasury Department and the board of road commissioners from Alaska.

The Joint Committee on Reorganization further recommended that there be established an independent Bureau of Purchase and Supply, with the general functions now exercised by the General Supply Committee in the Treasury Department, to purchase supplies for the executive departments and minor offices in Washington and, under certain conditions, for their field services. There were further recommendations for the establishment of an Office of Public Buildings and Parks in the District of

Columbia; for the transfer of the Solicitors of some of the departments from the Department of Justice to the departments served by them; and for making the Budget Bureau independent of the executive departments.

This recommended bill died still-born. By executive order the Patent Office was transferred from the Interior to the Commerce Department. A separate statute created the office of Public Buildings and Parks of the National Capitol substantially as recommended by the Joint Committee. Another separate statute created an independent establishment, known as the Veterans' Administration, to which was transferred the Veterans' Bureau, Pension Bureau, the National Homes for Disabled Volunteer Soldiers, and certain work relative to allowances for retired government employees.

None of the other recommendations of the Joint Committee have been carried out, even in separate bills.

President Hoover in nearly all of his annual messages to Congress has referred to the necessity of consolidating certain activities of the administrative branch of the Government and this question was made the subject of a special message of February 17, 1932 (printed as an appendix to this book), wherein he suggested legislation in general terms authorizing the President to consolidate certain agencies of the administrative branch of the Government, apparently for the reasons which he had stated when Secretary of Commerce. In other words, he apparently believed that the Congress, which in the early days of the Republic was capable of organizing the departments of the Government, was incapable of legislating to redistribute, consolidate, and in some instances to abolish the bureaus which it had created. It remains to be seen whether the President is not right in this view of the impotency of Congress, when it finds itself confronted with the bureaucracy, aided by various trade associations or other selfish interests, which seek to frustrate any real accomplishments in consolidations.

However, little has been done in this field, except to scratch the surface. The entire governmental service should be reorganized along the lines of unifunctional

activities. It may be—as many thoughtful men contend—that the War and Navy Departments should be consolidated in a Department of National Defense—although I doubt it—and that there should be transferred to this department the Coast Guard of the Treasury Department. Certainly the other three navies operated by the Government—the Army transports, the vessels of the Department of Commerce to look after lighthouses, surveys, inspections, and the vessels of the Department of Labor used for the enforcement of immigration laws—could be profitably transferred to the Navy. There could thus be a consolidation of these separate organizations with their separate maintenance and repair forces, thus promoting increased efficiency resulting from unity of command in time of war and reducing to a minimum the costly duplication of overhead.

It seems equally clear that there should be a unified disbursing system. The Comptroller General has frequently and consistently invited the attention of Congress to the fact that we are now supporting approximately 3,000 disbursing clerks and office forces, although the number could be decreased to approximately 500 disbursing clerks and office forces with greatly increased efficiency and economy in the expenditure of public moneys. To sustain the present method of a disbursing clerk in each of the more important cities of the United States and in many foreign cities for the several administrative branches of the Government with all the resulting overhead expenses, is inexcusable waste. Even in the city of Washington, within the shadow of the Treasury, there are as many disbursing clerks and assistants as there are departments and larger offices of the Government. No business establishment would tolerate such a costly duplication of effort. It is only possible in Uncle Sam's Wonderland.

What is true of the disbursing system, in its lack of efficiency, duplication in large part of its personnel, overhead, and lack of centralized control, is true in an even greater degree in the distribution of the construction activities of the Government among the several departments and establishments. No possible argument can justify the

Veterans' Administration, for instance, being charged with the drawing of specifications, letting of contracts, and supervising the construction of hospitals throughout the country. The same is true of the Treasury Department, Agricultural Department with its bureau of public roads, and the Interior Department with its construction activities on Indian Reservations and irrigation projects. As previously suggested, the War and Navy Departments should be divorced from all river and harbor work and in fact from all construction work, that does not relate directly to national defense.

President Hoover has frequently recommended that there be created an Administration of Public Works and that he be authorized to transfer to that establishment the construction activities of the United States, but some of his subordinates have appeared before Committees and opposed specific bills to carry out, in substance, such recommendations. If such a minor official cannot approve the recommendations of the President, he should either remain silent, unless specifically questioned by a legislative committee, or resign from the public service. There can be no constructive administrative action, if the subordinates of the President—however small or large the office they may hold—are permitted to oppose his action.

As heretofore suggested, the Fleet Corporation and the Inland Waterways Corporation are heavy and unnecessary burdens to the taxpayer. These business activities of the Government should be divested of their corporate character and placed in the Department of Commerce, and required to operate or cease to operate on the basis of the revenue earned by them without further aid from the Treasury.

The activities of the Children's Bureau of the Department of Labor and Bureau of Home Economics in the Agricultural Department should be abolished as extra-constitutional activities. The Bureau of Education in the Interior Department and the Public Health Service in the Treasury Department should be combined in one bureau under either the Interior or Agricultural Department and their functions strictly restricted to the true sphere

of the Federal Government. Thus would be saved the expense of a large part of their overhead.

With the exception of supplies required by the departments and other offices in Washington and for certain of their field services now purchased by the General Supply Committee, there is no central purchasing agency for the purchase of the supplies required by the several departments and establishments of the Government. The consequence is that not only the keenest competition arises between some of the departments (especially between the War and Navy Departments during the late war, until there was established the War Industries Board), but there is a costly duplication in personnel, overhead, warehouses, etc., to an even worse degree than in the matter of the existing disbursing and construction activities of the Government. The Navy Department, for instance, has separate purchasing and contracting organizations attached to several of its bureaus and the same situation exists in the War Department. In the latter department, for instance, the Quartermaster Corps, Ordnance Department, Air Service, Engineer Corps and others have more or less separate and complete purchasing and contracting systems.

The continuous growth in the appropriations for the Department of Commerce has been referred to in a previous chapter and more than \$5,000,000 of that expense is the result of the maintenance by the Bureau of Foreign and Domestic Commerce of representatives—many without any previous business experience—in the principal cities of the world, who are engaged in collecting information concerning foreign trade possibilities. This large force of men and women, with their overhead expense of office rent, allowances of various kinds, and traveling expenses, has grown up in the past few years and this notwithstanding the fact that there are United States Consuls and vice consuls under the State Department in the principal trade centers of the world, whose primary duties relate to commercial possibilities and activities of the United States in foreign lands. A large part of this duplication of effort, personnel, and expenses could be saved to

the United States by abolishing the offices of these trade representatives and trade advisers and transferring their duties to the consular service of the United States with some slight increase in personnel of that service in the greater trade centers. This Government existed from 1789 until about 1912 without these trade representatives of the Department of Commerce and during that period our foreign commerce grew from almost nothing to billions of dollars a year.

With the possible exception of the duplication of offices due to the separation of the War and Navy Departments as separate branches concerned with the defence of the nation, there is probably no greater duplication of offices than the small army of lawyers, who are employed in the various departments and who duplicate each others' services. It was recently shown in the House of Representatives that the Veteran's Bureau alone had over 800 lawyers upon its payroll. While this touches the high-water-mark in giving opportunities for employment to legal novitiates, yet in other departments of the government, and more especially in the so-called independent establishments, like the Interstate Commerce Commission, there are excessive numbers of lawyers upon the government payroll. These are in addition to the many lawyers employed by the Department which, in theory, conducts the litigation of the government and advises all departments in reference to legal questions except of a fiscal nature.

Nothing is more amazing to the English judge or barrister than the statement that there are, in the United States, over 100,000 lawyers, for the entire Bar of England does not greatly exceed 1,000 in number. It should be added, however, that this refers only to barristers, and that, if solicitors were included, the number of lawyers would be greater in England, but insignificant in comparison with the number of lawyers in America.

It seems unnecessary to cite further instances where consolidations and reorganizations could be effected in the administrative branch of the Government with substantial savings in public money and with increased efficiency in the conduct of the public business, but it will

doubtless require many years to break down bureaucratic opposition to these much-needed reforms.

Like the Old Man of the Sea, an overgrown and arrogant bureaucracy is firmly set on Uncle Sam's back and it is not strange that even his giant strength totters and stumbles under an intolerable burden.

As this book is written, a sincere attempt is being made by the specially appointed Economy Committee of the House in co-operation with the President to bring about a more efficient governmental machine, but the author suspects and predicts that when the session ends, Uncle Sam will find himself, as little Alice did in the heading of this chapter, about where he started, for in America, in the matter of governmental reorganization.

"if you want to get somewhere else, you must run at least twice as fast as that."

## CHAPTER XVIII

### BUREAUCRACY AND THE CONSTITUTION

"Governments, like clocks, go from the motion men give them; and, as governments are made and moved by men, so by men they are ruined, too. Therefore governments rather depend upon men, than men upon governments."—WILLIAM PENN.

EMPHASIS has been repeatedly placed, in the preceding chapters, upon the lack of correspondence between the functions of many governmental bureaus and any discernible grant of power under the Constitution of the United States. This thought cannot be too constantly emphasized, and yet it suggests an aspect of the problem of bureaucracy, for which there is seemingly no remedy.

To use the homely analogy of William Penn, the American people have so recklessly played with the machinery of their clock that it no longer strikes time to the great traditions of the English-speaking race. The Constitution could not survive the decay of the spirit of constitutional morality in the American people.

As has been shown, the unlimited power of the Federal Government over the purse of the nation—and it is as the purse of Fortunatus—has impaired and almost destroyed our form of government, except in name. It is easy to take a clock to pieces, but it is not so easy to put it together again. Only an expert clock-maker could do this. The Framers of the Constitution were great clock-makers in the science of statecraft and they did, with admirable ingenuity, put together an intricate machine, which promised to run indefinitely, and tell the time of the centuries.

Unfortunately, that fair hope has been belied by succeeding generations, who cared more for the practical advantages of the living day, than the preservation of fundamental principles of government sanctioned by the collective wisdom of the ages.

The second chapter of this book attempted to show that, even from the beginning, the ancient timepiece of

the Constitution was not perfect—largely because the views of the ablest members of the Convention were defeated, as so often happens in a democracy, by a small and unreasoning minority. These defects were clearly recognized by the greatest of these master-builders, and it was hoped that the provision for amendment in Article V—deemed at the time to be liberal—would make possible the correction of the latent injustices, which a minority of the Convention forced upon the members.

With the creation of many new States, of small population and with no great traditions behind them, this hope has long since vanished, although conditions in respect to the unequal distribution of political power and the inequality of tax burdens may one day become so intolerable that the final resort, provided in the Constitution, of a new convention to revise the Constitution may be forced upon the American people. Such a remedy would be intolerable to any thoughtful man at this time, when there is so much loose thinking and the spirit of radicalism is so widely prevalent. To attempt a new constitutional convention to reshape the great compact nearer to the heart's desire of Washington, Franklin, Madison, Hamilton, and Wilson would, indeed, be a dangerous experiment, and justifies the belief that it is today better for the Republic to

". . . bear those ills we have  
Than fly to others that we know not of."

When better times bring saner views and the body of the electorate is better educated in the fundamentals of constitutionalism, a national convention might then be called, but it is doubtful whether, under Article V, the requisite number of States would ever agree to the call.

Even if such a convention were called and it proved as wise as the great Convention of 1787, yet any attempt to bring about a more equitable distribution of political power by reconstituting the Senate upon more equitable grounds, or by providing a more equitable method of dis-

tributing the burdens of taxation, would never be accepted by the requisite number of the States, for it is true today, as in the Convention of 1787, that the little States would never surrender the advantage of an inequality, both in the distribution of political power and in tax burdens. No one can say with safety what is in the lap of the gods, but it would now appear that nothing short of a political revolution, which might well be bloodless, could correct the evils referred to, and rebuild the Republic upon the surer foundation of even-handed justice.

Even more impracticable would seem to be any attempt to bring the Federal Government back into the channels of power as provided in the Constitution. Neither by act of Congress, nor by Amendments to the Constitution, would the vast system of unconstitutional bureaucracy, superimposed upon our form of government, be done away with. It is possible that Congress might, in a saner age, especially if there were a true revival of constitutionalism, gradually abolish the superfluous bureaus of the government, which not only offend the Constitution but are likewise hostile to that spirit of individualism, once the great characteristic of the American people. The only remedy is in the people themselves, and at present they are in such hearty accord with the tendency to ever-increasing centralization in government bureaus, that the hope of any reform has shrunk to the vanishing point.

Only one consideration will ever induce the American people to retrace their steps, and that is the ever-increasing expense of bureaucracy; and even this consideration will not greatly affect them until they become "tax conscious." They will never become "tax conscious" until the burdens of taxation are distributed more equitably. As long as only 400,000 people out of 120,000,000 pay substantially all the income taxes of the country—and that constitutes the largest source of our revenues—the great mass of the people will be quite content with the redistribution of property through a gross perversion of the function of taxation.

Let the author not be accused of legal formalism in his

constant insistence upon the preservation of the Constitution. The author has never regarded this as a wholly static instrument. He recognizes that the genius of a race can never be "cribbed, cabined and confined" within the limits of a written document.

The Constitution is something more than a written and definitive contract. It is a living organism, susceptible of adaptation and, therefore, of increasing growth, and its vitality depends upon its correspondence with the necessities and spiritual tendencies of the American people. This only illustrates afresh the immortal truth of Aristotle, that any constitution, which does not thus correspond to the *ethos* of the people, will necessarily perish. While some learned Justices of the Supreme Court, in the true spirit of legal sacerdotalism, have affirmed that the Constitution today means exactly what its framers meant, yet no one can read the court's interpretations of the Constitution, contained in two hundred and eighty volumes of the Supreme Court reports, without being convinced that, with extraordinary ability, the Court has developed and adapted the Constitution, as a quasi-Constitutional Convention in a restricted sense, to the changing needs of the most progressive nation in this most changing period of the world's history. Thus, it cannot be seriously contended that one of the greatest of the Federal powers, namely, the regulation of interstate and foreign commerce, means today what the framers meant when they vested this power in the Federal Government. To them the division of governmental power between interstate commerce and intrastate commerce was extraordinarily simple, while its attempted application to a country, welded together by the railroad, steamship, telephone, telegraph and the radio, has required a judicial subtlety, that has made our dual system of government, in the economic sphere, one of the most intricately complex nations of the world. In this respect, the men who framed the Constitution would not recognize their handiwork today.

The profound impact of a mechanical civilization upon our written form of government was appreciated by the greatest of all Chief Justices, John Marshall, when he said,

in one of the greatest of his opinions (*McCulloch v. Maryland*) :

"This provision is made in a constitution intended to endure for ages to come, and, consequently, to be *adapted* to the various crises of human affairs."

I quote this, lest I be accused of heresy in my suggestion that the Constitution is, by usage, judicial interpretation, political habits and unwritten political institutions, necessarily subject to unceasing adaptation to make it serve the necessities of the most changing nation in the world.

The thought of an ever changing Constitution is not, in all respects, a comforting one, for, if it be a living organism and have within itself the potency for development and growth, yet, like all living organisms, it then also has within it the seeds of degeneration and possibly death. Such a conception of the Constitution challenges the thought of each living generation of Americans to the great question whether this living organism is to grow in wisdom, or perish in folly.

The Constitution is not today what it was fifty years ago, nor was it then what it was a half a century earlier, and it is safe to predict that it will not be fifty years from now what it is today. The eternal inquiry arises, "*quo vadis?*" Are we treading the downward path to Avernus, from which escape is so difficult, or are we ascending to new and nobler heights of constitutionalism? That should be the great question for every thoughtful American.

Time will not suffice to illustrate my meaning by suggesting the portentous changes to which the Constitution has been subjected. I can only indicate a few by a passing sentence and in indicating these, I do not mean to suggest that some of them may not be desirable, for some undoubtedly conform to the economic needs of the nation and to the democratic genius of the American people. The destruction of the electoral college, except as an empty form; the profound change in the representative

system, due to the changed democratic ideal that a representative should think *with*, and not *for* his constituents; the breaking down of the barriers that once imperfectly marked the different functions of the Executive, Legislative and Judiciary; the steady deterioration in power of Congress, as the great Council of the Republic and the corresponding aggrandizement of the Executive, until he is, in everything but name, an elective King for a short tenure; the perversion of the taxing power, whereby the Federal Government assumes powers never granted to it; the even greater perversion of the power of appropriation, whereby the Federal Government has persuaded the states, by the moral bribery of Federal grants, to yield their reserved powers; the destruction of the equitable principle that direct taxation should be apportioned among the states in proportion to political power in the House of Representatives; the denial by the Senate of the right of the states to choose their own Senators, except by and with the advice and consent of the Senate; the denial of the right of the states to determine, in respect to their local conditions, the qualifications of an elector; the slow destruction of the power of the state over domestic commerce by the expansion of the federal commerce power; the creation of numerous bureaus and some departments to effectuate purposes, which are not within the sphere of federal power; the socialistic experiment of aiding failing industries by grants from the Federal Treasury; the perversion of the taxing power to re-distribute wealth; the appointment of diplomatic representatives to represent our country in foreign lands without the sanction of the Senate; the power to declare war without the consent of Congress by acts which make war inevitable, and, finally, the crowning atrocity of the Eighteenth Amendment, which invades individual liberty in a manner, at which Washington and Franklin would have stood aghast and which, in this respect, relegates the once proudly conscious States to the ignominious position of being mere police provinces.

These are only a few illustrations of the profound changes which have been wrought in one hundred and

forty-three years of constitutional development. As I have said, some of them may be advantageous, but certainly not all of them. Many of them constitute a revolutionary change in the conceptions of liberty, which were supposed to have been unalterably written into the Constitution.

I appreciate that many of these changes are the inevitable results of the impact of a mechanical civilization. Take, for example, the more comprehensive question, which once agitated the American people, that of centralization. When the Constitution was adopted, the States had a very real consciousness of their own sovereignty, while the conception of national unity was a very slow growth. All this is changed in our lifetime as a result of a mechanical civilization. The old struggle against centralization has largely passed away. Only lip service is longer paid by either of the great parties to the rights of the states. The "indestructible union of indestructible states" is now little more than a rhetorical phrase. Each of the great political parties, when in power, vies with the other in consolidating the Union by multiplying bureaucratic agencies, for which no true authority can be found in the Federal Constitution.

To the extent that this is the result of economic forces, it is irresistible, even if not always desirable, but it is, in part, due to that greed for power, which grows by what it feeds upon. Some of us believe that the Constitution cannot survive if the planetary system of the States be wholly absorbed in the central sun of the Federal Government. Our nation is too vast in area and our people too numerous to be governed altogether from Washington and yet it seems impossible to combat the tendency towards centralization, when this "*ethos*" of the people, of which Aristotle spoke, demands it. The portentous difference between the American people, when they framed the Constitution, and the American people today is this: our forbears thought in terms of abstract political rights, but we today think in terms of concrete economics. Moreover, the gospel of the American people today is efficiency and to secure such efficiency they are apparently willing

to sacrifice any principle that seemingly makes for the greater consideration of security.

We can measure this in the contempt of the people for Congress and their confidence in the Executive, whoever he may temporarily be. In nearly every controversy between the Executive and the Congress, the people sympathize with the Executive, for they can visualize a single individual and make a legend of him, but the multi-headed Congress makes no appeal to their imagination. They share the relief of the President when he no longer has "Congress on his hands," to use the popular expression. This contemptuous phrase sounds like Cromwell.

This, in itself, is an amazing change in the *ethos* of the people, for our Constitution was formed when the traditions of the great English Revolution of 1688 were still dominant in men's thoughts. Then the people were jealous of executive power and established in England the supremacy of Parliament. Today many Americans subconsciously believe that the United States would be better off, if the President were made a Committee of One for the Union. That this is their *ethos* is shown by the fact that, in our industrial development, all government of corporations tends to concentrate power and, therefore, responsibility, in one man, and we cannot think in terms of one-man power in industrial development without a reflex effect upon our conception of that larger corporation which we call our government.

Is it possible to combat this changed consciousness of the American people, so largely due to mechanical forces, which no written Constitution can overcome?

One answer is that the dependence upon a written Constitution and our mistaken belief in its static nature and its self-executing powers has tended to deaden the political consciousness of the American people. They mistakenly believe that, in some way, the Constitution will save itself and they have an obsession that, if Congress passes unconstitutional laws, the Supreme Court will, in some way, invalidate them and that, therefore, the people need have no concern about such invasions of the Constitution. The idea that the Supreme Court has such

unrestricted and plenary power is a great illusion. In the first place, the Supreme Court can invalidate no law unless it is involved in a concrete case and often no such case ever arises. In the second place, the Supreme Court, necessarily influenced by the spirit of democracy, sustains any doubtful statute unless its conflict with the Constitution be clear and almost indisputable.

Moreover, there are many laws, which involve questions of political discretion, which can never come before the Supreme Court, either because their invalidity depends upon the motive of the legislators, or because they involve profound questions of political discretion, upon which the Court is not competent to act. We need not minimize the great work of the Supreme Court and should realize that its conservative course is the only one it could pursue to retain its prestige, but when less than sixty federal statutes have been declared invalid by that court in the history of the government and thousands of laws have been passed by Congress, for which no possible warrant can be found in the Constitution, it is clear that the Court cannot, or at all events does not, adequately defend the Constitution.

As a result the Constitution, as a living organism, is in process of deterioration, and not of growth. As the author said in an earlier book, *The Vanishing Rights of the States*:

"The encroaching waves each day ebb and flow. At high tide there is less beach and at low tide more. At times the beach is devoured by the ocean, when a tempest has lashed it into a fury, and then the waters will become as placid as a mountain lake, and the shore will seem to have triumphed in this age-old struggle between land and water.

The owner of the upland is often deceived by the belief that the fluctuations of the battle generally leave the shore line intact, but when he considers the results of years, and not of months, he will realize that the shore has gradually lost

in the struggle and that slowly, but steadily, the ocean is eating into the land."

If we of today, engrossed as we are in the complexity of this working-day world, fail to see how the upland of the Constitution is being slowly destroyed by the erosion of the waves of innovation, yet the men who framed the Constitution had no illusions as to its perpetuity. Thus, Franklin, after the Constitution was adopted, said, with his usual genial humor,

"Our Constitution is in actual operation; everything appears to promise it will last, but in this world nothing is certain but death and taxes."

Indeed, on the last day of the Convention, when the aged Franklin—as some say, with tears in his eyes—implored the reluctant delegates to sign the great compact, which was to immortalize them all, and had won their consent by his skillful and ingratiating speech, he made this prediction:

"There is no form of government but what may be a blessing to the people if well administered for a course of years, and can only end in despotism, as other forms have done before it, when the people shall become so corrupted as to need despotic government, being incapable of any other."

Penn's homely, but forceful, analogy, which heads this chapter, brings us to the very heart of the problem. No constitutional form of government can possibly be maintained unless the people have, not only an intelligent grasp of constitutional principles, but an ever-vigilant and militant purpose to defend them. The purpose of a constitution is not only to create the mechanics of government, but, far more, to subject the passing impulses of a living generation to the reasonable restraints of the collective

wisdom of the past. This is impossible unless the individual has some knowledge of the wisdom of the past and a real sense of obligation to the future. Edmund Burke once said that society was a "noble compact between the dead, the living and the unborn." If the living generation lives in the day, constitutional morality is necessarily impossible. Without such morality, no form of government, which attempts to restrain the passing emotions of the day, can possibly survive.

This seems to mark the fatal difference between the present generation and the generation that created the Constitution. I again repeat that the latter thought in terms of abstract political rights, while the living generation thinks only in terms of concrete economics. In other words, the individual today is a pragmatist in the sense that he not only restricts his consideration of any problem to its ponderables, but is often ignorant of the great imponderables that underlie almost any problem. These imponderables are of first importance.

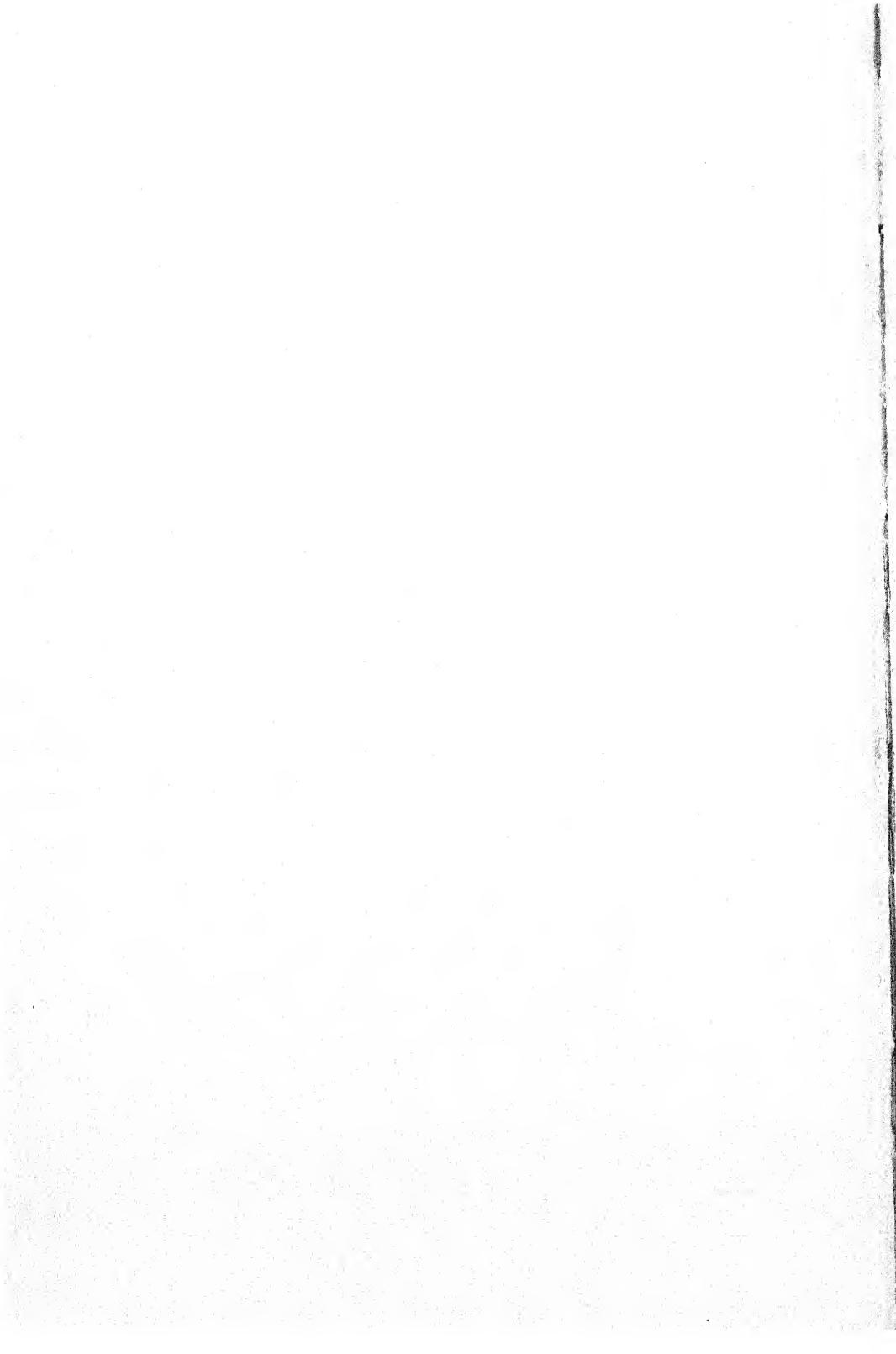
One illustration will suffice to justify this statement. In the long agitation, which culminated in the Eighteenth Amendment, there was interminable discussion as to the ponderables of the problem, but very little consideration was ever given, even by thoughtful Americans, to the undoubted fact that the amendment destroyed the basic principle of our dual form of government by inextricably interweaving the governmental powers of the Federal Government with the reserved police powers of the States. To the pragmatist, the controlling question as to any governmental proposal is, "Does it work an immediate advantage?" Its ultimate effect upon our institutions receives scant or no attention.

The reason for this is very obvious. Life has grown so infinitely complex that it is far more true today than it ever was in Franklin's age that men belong to the "ephemera," of which the sage old Doctor once spoke. We live in the day, forgetful of yesterday and altogether indifferent to the morrow. If any proposal is made that seems to offer a present advantage, the people enthusiastically support it, without considering its possible conflict

with all the collective wisdom of the past and its inevitable effect upon the future.

Had the founders of the Republic reasoned in this way, they would have argued that the tax on tea, and the later stamp tax, should be gladly accepted, in return for the great benefit which the Colonies received from the Mother Empire, which protected them in their infancy by her Army and Navy, but the founders of the Republic believed that, if they could be taxed without the consent of their colonial legislatures, their condition was one of vas-salage, for they realized full well, as their English forbears had before them, that the power to tax is the power to destroy. The philosophic mind of Burke realized this unusual capacity of the American people to weigh the imponderables of any problem against the ponderables and the War of Independence, in which our forbears fought for seven weary years for an abstract principle, vindicated his judgment of the American people of that great era.

Of that spirit of constitutional morality there is little evidence today and it is this that has made me so pessimistic as to the perpetuity of our form of government. Each generation of Americans, to gain some immediate and practical advantage, will sacrifice some remaining principle of the Constitution, until that noble edifice will one day become as the Parthenon, beautiful in its ruins, but nevertheless a useless and deserted temple of Liberty.



## APPENDICES



APPENDIX "A"

NUMBER OF EMPLOYEES IN EACH BRANCH OF THE FEDERAL EXECUTIVE CIVIL SERVICE ON JUNE 30, 1930<sup>1</sup>

Department or Office	In District of Columbia			Outside District of Columbia			Total
	Men	Women	Total	Men	Women	Total	
The White House.....	41	4	45	...	...	...	45
State.....	377	337	714	2,906	1,071	3,977	4,691
Treasury.....	5,588	7,848	13,430	32,401	7,003	39,404	52,900
War.....	2,627	1,781	4,408	41,613	4,368	45,881	50,289
Justice.....	644	278	923	2,827	1,051	3,878	4,800
Post Office.....	3,227	848	4,075	285,696	27,224	312,920	316,095
Navy.....	5,725	1,202	6,927	38,459	2,310	40,769	47,696
Interior.....	2,290	1,316	3,606	12,655	2,312	14,967	18,573
Agriculture.....	3,046	2,209	5,255	17,512	2,969	20,481	25,736
Commerce.....	4,831	4,587	9,418	14,172	3,365	17,537	26,955
Labor.....	411	363	774	3,358	908	4,166	4,940
Government Printing Office.....	3,491	928	4,419	...	...	...	4,419
Smithsonian Institution.....	402	148	550	...	...	...	550
Interstate Commerce Commission.....	1,162	369	1,531	600	31	721	2,252
Civil Service Commission.....	151	244	395	88	73	166	561
Bureau of Efficiency.....	33	13	46	...	...	...	46
Federal Trade Commission.....	282	129	411	30	9	39	450
Shipping Board.....	422	300	722	384	129	513	1,235
Alien Property Custodian.....	95	85	180	...	...	...	180
Tariff Commission.....	124	86	210	8	2	10	220
Employees Compensation Commission.....	40	78	118	23	38	61	179
Federal Board for Vocational Education.....	42	45	87	...	...	...	87
Panama Canal.....	64	14	78	14,049	572	14,621	14,699
Public Buildings and Parks of the National Capital.....	2,028	625	2,653	...	...	...	2,653
General Accounting Office.....	1,226	744	1,970	...	...	...	1,970
Veterans' Bureau.....	1,565	3,190	4,755	12,636	7,323	19,964	24,719
Railroad Administration <sup>2</sup> .....	10	5	15	...	...	...	15
Commission of Fine Arts.....	2	...	2	...	...	...	2
War Finance Corporation <sup>3</sup> .....	10	3	13	...	...	...	13
National Advisory Committee for Aeronautics.....	20	20	40	198	16	214	254
Federal Reserve Board <sup>4</sup> .....	89	98	187	18	...	18	205
Board of Tax Appeals.....	66	84	150	...	...	...	150
Board of Mediation.....	20	8	28	...	...	...	28
Federal Power Commission.....	25	11	36	2	...	2	38
Federal Radio Commission.....	39	58	97	...	...	...	97
American Battle Monuments Commission.....	5	4	9	25	8	33	42
Federal Farm Board.....	128	100	228	1	2	3	231
Total.....	40,348	28,162	68,510	479,711	60,694	540,405	608,915

<sup>1</sup> Does not include legislative or judicial services, nor the commissioned, warranted, or enlisted personnel of the military, naval, marine corps, or coast guard services, nor the government of the District of Columbia.

<sup>2</sup> Approximated.

<sup>3</sup> Includes 13,200 clerks at third-class offices, 203 screen-wagon contractors, 246 carriers for offices having special supply, 5,698 clerks in charge of contract stations, 11,789 star-route contractors, and 278 steamboat contractors. Does not include 33,483 clerks at fourth-class offices who are employed and paid by the postmaster, and 22,240 mail messengers not included in previous computations.

<sup>4</sup> Includes administrative offices of Emergency Fleet Corporation, but not workmen at shipyards or in warehouses or employees on vessels.

<sup>5</sup> Positions not subject to the civil service act.

APPENDIX "B"

RECEIPTS, EXPENDITURES, AND PUBLIC DEBT, 1791-1930, BUT NOT INCLUDING POSTAL RECEIPTS AND POSTAL EXPENDITURES, EXCEPT POSTAL DEFICITS

Fiscal Year	Total Ordinary Receipts	Total Ordinary Expenditures	Total Gross Debt June 30	Fiscal Year	Total Ordinary Receipts	Total Ordinary Expenditures	Total Gross Debt June 30
					Total Ordinary Receipts	Total Ordinary Expenditures	
1791	\$4,418,913	\$4,269,027	\$75,463,476	1861	\$41,509,931	\$46,546,645	\$90,582,417
1792	3,669,960	5,079,532	77,227,924	1862	51,987,456	474,761,819	524,177,915
	4,652,923	4,482,313	80,312,634	1863	112,697,291	714,740,725	1,119,773,581
1793	5,411,905	6,990,839	78,427,404	1864	264,626,771	865,322,642	1,815,836,814
1794	6,114,534	7,539,809	80,747,587	1865	533,714,605	1,277,552,224	2,677,929,012
1795	8,377,530	5,726,986	83,762,172	1866	558,032,620	520,809,417	2,755,763,929
1796	8,688,781	6,133,634	82,064,479	1867	450,624,010	337,442,675	2,650,168,223
1797	7,900,496	7,676,504	79,228,529	1868	405,638,083	2,583,446,456	2,583,446,456
1798	7,516,813	9,666,455	78,408,669	1869	572,943,747	322,665,278	2,545,110,90
1799	10,848,749	10,786,075	82,976,294	1870	411,255,477	309,633,561	2,436,453,269
1800	12,995,331	9,394,582	83,038,050	1871	383,523,945	292,177,188	2,322,052,141
1801	14,995,794	7,862,118	80,112,632	1872	374,106,868	277,517,963	2,209,990,838
1802	11,064,098	7,851,653	77,054,686	1873	230,452,45	215,1210,345	2,151,210,345
1803	11,826,307	8,719,442	86,127,120	1874	304,978,756	302,633,873	2,159,935,730
1804	13,560,593	10,506,234	82,312,150	1875	288,000,051	274,623,393	2,156,276,649
1805	15,519,931	9,805,617	75,723,270	1876	294,095,865	265,101,085	2,130,847,772
1806	16,398,019	8,354,151	69,218,398	1877	281,404,119	244,344,475	2,107,759,903
1807	17,080,662	9,932,492	65,196,317	1878	257,63,879	236,664,327	2,159,413,315
1808	7,773,748	10,280,748	57,023,192	1879	273,827,185	265,947,384	2,298,912,643
1809	9,384,215	8,156,510	53,173,217	1880	333,226,611	267,442,958	2,090,903,872
1810	14,423,529	8,058,337	48,005,587	1881	360,782,293	260,712,388	2,019,285,728
1811	9,801,133	20,280,771	45,209,737	1882	403,525,250	257,981,440	1,856,915,614
1812	14,340,410	31,680,852	55,962,827	1883	398,287,582	265,408,138	1,721,958,918
1813	11,181,625	34,720,926	81,187,846	1884	348,519,870	244,126,244	1,625,307,444
1814	15,729,024	32,708,139	99,833,660	1885	323,626,706	240,522,635	1,785,511,169
1815	47,677,671	30,586,691	127,349,933	1886	336,439,726	242,483,139	1,555,659,550
1816	33,099,850	21,843,820	123,491,956	1887	371,032,277	267,922,181	1,655,485,294
1817	21,185,171	10,466,121	103,466,633	1888	379,266,075	267,924,801	1,384,631,616
1818	24,603,375	21,463,810	95,529,648	1889	387,030,059	29,388,978	1,249,470,511
1819	17,830,670	18,260,627	91,015,566	1890	403,080,984	318,040,711	1,122,396,584
1820	15,810,753	89,987,427	89,987,427	1891	392,612,447	367,773,904	1,005,806,561

\* Total Gross Debt as of January 1 instead of June 30 is given for the years 1791-1842, inclusive.

## APPENDIX B

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1822	20,232,428	15,000,220	93,546,676	1892	...	354,937,784	345,023,351
1823	20,540,666	14,706,840	90,875,877	1893	...	385,819,629	383,427,953
1824	19,812,213	20,326,708	90,269,777	1894	...	306,355,316	367,521,281
1825	21,840,818	15,877,229	83,788,442	1895	...	324,729,419	356,191,298
1826	23,260,434	17,035,797	81,054,059	1896	...	338,142,447	352,179,446
1827	22,966,364	16,139,168	73,987,377	1897	...	347,721,705	363,774,159
1828	24,763,630	16,394,843	67,475,043	1898	...	405,321,335	443,358,583
1829	24,827,627	15,201,333	58,421,413	1899	...	515,960,621	60,022,179
1830	24,844,116	15,143,066	48,565,406	1900	...	567,240,872	520,850,847
1831	28,526,821	15,247,651	39,123,191	1901	...	594,616,855	524,617,572,245
1832	31,867,176	17,288,930	24,322,235	1902	...	562,478,233	485,24,249
1833	33,928,427	23,017,572	7,001,628	1903	...	561,880,722	517,006,127
1834	21,791,936	18,622,569	4,760,082	1904	...	541,087,085	583,639,900
1835	35,440,087	17,572,813	37,733	1905	...	567,228,914	1,132,357,095
1836	30,826,796	37,513	1906	...	594,984,446	570,202,278	
1837	24,954,153	37,243,496	336,937	1907	...	665,860,386	579,18,842
1838	26,312,562	33,867,019	3,008,124	1908	...	601,61,907	659,19,6320
1839	31,482,749	26,899,128	10,434,221	1909	...	604,320,498	693,747,885
1840	19,480,115	24,117,579	5,373,343	1910	...	675,11,715	693,617,065
1841	16,880,160	26,565,873	5,250,875	1911	...	701,832,911	691,20,512
1842	19,976,198	25,205,761	13,594,480	1912	...	692,609,204	689,881,334
1843	8,302,702	11,858,075	32,742,922	1913	...	724,511,230	724,511,963
1844	29,321,374	22,337,571	23,461,652	1914	...	734,673,167	735,081,431
1845	29,970,106	22,937,408	15,925,303	1915	...	697,910,827	760,516,802
1846	29,639,967	27,766,925	15,550,202	1916	...	782,534,548	741,996,227
1847	26,495,769	57,281,412	38,826,534	1917	...	1,124,324,795	2,086,042,104
1848	45,375,779	45,377,226	47,044,862	1918	...	4,180,425,156	13,791,907,895
1849	31,208,143	45,051,657	63,061,858	1919	...	4,654,380,899	18,952,141,180
1850	43,603,439	39,545,492	63,452,773	1920	...	6,704,414,437	6,141,745,240
1851	52,559,304	47,709,017	68,304,796	1921	...	5,684,517,045	4,468,733,469
1852	49,846,816	44,194,919	66,199,341	1922	...	4,103,596,551	3,195,634,847
1853	61,587,054	48,184,111	59,804,661	1923	...	3,847,041,683	3,244,717,092
1854	73,800,341	58,044,862	42,243,767	1924	...	3,884,041,142	2,946,401,027
1855	65,310,575	59,742,668	35,558,499	1925	...	3,607,644,164	2,464,162,062
1856	74,016,699	66,171,026	31,974,081	1926	...	3,903,457,575	3,030,347,162
1857	68,965,313	67,775,708	28,701,375	1927	...	4,128,422,888	3,001,846,635
1858	46,655,366	74,18,220	44,913,424	1928	...	4,038,235,512	3,071,468,892
1859	53,466,465	69,070,977	58,498,381	1929	...	4,036,218,918	3,322,619,279
1860	56,064,608	63,130,398	64,843,831	1930	...	4,174,051,546	3,392,077,386

APPENDIX "C"

CHARGES FOR PRINTING WORK AND TO WHOM DELIVERED DURING THE FISCAL YEAR  
ENDED JUNE 30, 1931

Congress .....	\$2,499,995.34
Work ordered by Members of Congress:	
Miscellaneous charges .....	223.09
Documents, reports, bills, etc. ....	17,742.86
Speeches .....	61,257.91
Private orders for electrotypes .....	11.05
Superintendent of Documents .....	720,600.38
State .....	250,559.39
Treasury .....	941,489.95
War .....	684,459.76
Navy .....	747,348.71
Interior .....	249,138.63
Geological Survey .....	139,198.21
Smithsonian Institution .....	93,721.81
Justice .....	341,234.17
Post Office .....	1,895,680.02
Agriculture .....	1,080,021.83
Commerce .....	1,747,232.57
Patent Office .....	1,147,444.86
Labor .....	239,644.20
Library of Congress .....	387,912.12
White House .....	6,629.14
Pan American Union .....	40,906.66
Supreme Court:	
District of Columbia .....	4,327.91
United States .....	3,900.60
Court of Claims .....	38,499.58
Interstate Commerce Commission .....	232,647.64
Civil Service Commission .....	60,787.16
Geographic Board .....	473.62
General Accounting Office .....	78,396.18
Alien Property Custodian .....	1,460.83
Bureau of the Budget .....	34,144.48
District of Columbia .....	117,816.53
Employees' Compensation Commission .....	8,067.22
Federal Reserve Board .....	46,637.63
Federal Board for Vocational Education .....	17,403.65
Federal Trade Commission .....	47,381.43
National Advisory Committee for Aeronautics .....	25,040.04
Panama Canal .....	54,163.31
Railroad Administration .....	264.48
Board of Mediation .....	1,038.85
Shipping Board .....	42,262.18
Tariff Commission .....	17,013.43
Veterans' Administration .....	253,217.98
War Finance Corporation .....	52.78
Public Buildings and Public Parks .....	6,747.65
Arlington Memorial Bridge Commission .....	547.06
American Battle Monuments Commission .....	176.79
Bureau of Efficiency .....	539.22
Commission of Fine Arts .....	264.06
Federal Power Commission .....	3,405.05
National Forest Reservation Commission .....	239.02
Board of Tax Appeals .....	42,397.47

National Capital Park and Planning Commission .....	1,643.46
Inland Waterways Commission .....	489.36
George Washington Bicentennial Commission .....	24,179.79
Federal Radio Commission .....	11,675.70
Pan American Sanitary Bureau .....	15,647.07
War Claims Arbitrator .....	187.99
George Rogers Clark Sesquicentennial Commission .....	27.12
Personnel Classification Board .....	3,330.09
National Commission on Law Observance and Enforcement .....	7,055.32
National Academy of Sciences .....	254.34
American Samoan Commission .....	4,018.66
Yorktown Sesquicentennial Commission .....	162.94
Federal Farm Board .....	41,313.72
Court of Customs and Patent Appeals .....	4,688.70
<hr/>	
Total .....	\$14,546,440.75

## APPENDIX "D"

### MESSAGE

*To the Senate and House of Representatives:*

Because of its direct relation to the cost of Government, I desire again to bring to the attention of the Congress the necessity of more effective organization of the Executive branch of the Government, the importance of which I have referred to in previous messages. This subject has been considered many times by the Executive and by the Congress, but without substantial results. Various projects are now before the Congress.

The need for reorganization is obvious. There has been with the years a gradual growth of the Government by the accretion in its departments and by independent executive establishments, boards, and commissions as problems requiring solution confront the President and the Congress. To-day the Government embraces from 150 to 200 separate units, dependent on the method of notation used. Governmental units when once set up have a tendency to grow independently of other units. This leads to overlapping and waste. Moreover, there is a marked tendency to find new occupations when the initial duties are completed. The overlap and the number of agencies can be reduced.

A few consolidations, notably in law enforcement and the veterans' services, have been effected. Both of these reorganized agencies have been able to discharge the very greatly increased burdens imposed upon them without such an increase in administrative expense as would otherwise have been the case.

In the present crisis the absolute necessity for the most drastic economy makes the problem of governmental reorganization one of paramount importance. The amount of saving in public funds to be effected by a thoroughgoing reorganization, while difficult to estimate accurately, will be material, amounting to many millions of dollars annually. Not only will the Government's business be conducted more efficiently and economically but the great body of citizens who have business relations with their Government will be relieved of the burden and expense of dealing with a multitude of unnecessary and sometimes widely separated public agencies.

We may frankly admit the practical difficulties of such reorganization. Not only do different fractions of the Government fear such reorganization, but many associations and agencies throughout the country will be alarmed that the particular function to which they are devoted may in some fashion be curtailed. Proposals to the Congress of detailed plans for the reorganization of the many different bureaus and independent agencies have always proved in the past to be a signal for the mobilization of opposition from all quarters which has destroyed the possibility of constructive action.

There is little hope for success in this task unless it is placed in the

hands of some one responsible for it, with authority and direction to act. Moreover, the consummation of a comprehensive reorganization at one moment is not in the best public interest. Such reorganization should be undertaken gradually and systematically, predicated on a sound and definite theory of government and effectuated as the result of study and experience gained in the actual processes of reorganization.

I recommend, therefore, that the Congress provide for—

(a) Consolidation and grouping of the various executive and administrative activities according to their major purposes under single-headed responsibility, the Congress designating the title of the officer to be placed in immediate charge of such groups as are not now possible under existing organization.

(b) Adoption of the general principle that executive and administrative functions should have single-headed responsibility and that advisory, regulatory, and quasi judicial functions should be performed by boards and commissions, thus permitting the transfer of certain regulatory functions from executive officials to existing boards or commissions and executive functions from boards and commissions to executive officials.

(c) Authority under proper safeguards to be lodged in the President to effect these transfers and consolidations and authority to redistribute executive groups in the 10 executive departments of the Government or in the independent establishments, as the President may determine, by Executive order, such Executive order to lie before the Congress for 60 days during sessions thereof before becoming effective, but becoming effective at the end of such period unless the Congress shall request suspension of action.

The 10 major executive departments and the major regulatory and financial boards and commissions should of course be maintained. Some of these existing agencies are already organized upon the basis of their major purpose, but functions of the same major purpose now outside of these groups should be transferred to them.

It will be necessary also to authorize changes in titles of some officials and to create a few new positions in order to permit grouping and consolidation not now possible. With the enormous growth of governmental business there has been great expansion and diffusion of authority amongst minor officials. At the same time, there is an insufficient number of officials of definite and concentrated responsibility to the public. The additional expense of such officers over and above the salaries now paid to officials who would be displaced would be less than \$40,000 per annum. The saving in cost of administration would be many times this sum. The most important of the posts of this character are the following:

Public Works Administrator (new office).

Personnel Administrator (change from chairman of Civil Service Commission).

Assistant Secretary for Public Health (new).

Assistant Secretary for Education (change from commissioner).

Assistant Secretary for Merchant Marine (new office).

Assistant Secretary for Conservation (new office).

Assistant Secretary for Agricultural Research (change from present Assistant Secretary).

Assistant Secretary for Agricultural Economics (change from director).

The establishment of an Assistant Secretary for Merchant Marine would enable the consummation of the proposals in my message of December 8 in respect to the Shipping Board.

The public works administration should be partially a service agency to the other departments of the Government, executing certain construction work, the subsequent operation of which should be carried on by those departments. It should be also partially an agency administering certain contract work which cannot be delegated to any one department. Naval, military, and some other highly specialized construction work should not be transferred to this agency. The supervision and construction of rivers and harbors work should be continued under the direction of the Army engineers, who should be delegated by the Secretary of War to the service of the Administrator of Public Works for this purpose.

The personnel administration should comprise various agencies relating to the personnel of the Government as a service agency to all departments of the Government. I recommend that the Civil Service Commission should be maintained as an advisory body to the Personnel Administrator, and the approval of this body should be required in all regulatory questions. The Personnel Administrator should be the chairman of the commission. Other functions relating to the personnel of the Government should be transferred to the personnel administration as may be deemed wise from time to time.

#### RECLAMATION SERVICE

With respect to certain agencies in the Government, I recommend a separate legislative reorganization of policy. The first of these is the Reclamation Service. Reclamation should have a broader import than that of bringing unproductive land under cultivation. We do not need further additions to our agricultural land at present. Additional agricultural production except such marginal expansion as present projects warrant is inadvisable.

The conservation of water by storage is required, not alone in the West, but in all parts of the country.

The effective development of water conservation through storage is largely an interstate question in the aid of domestic and industrial water supply, transportation, irrigation, and flood control. Where construction work for storage relates to these larger issues, it is properly the work of the Federal Government. Where water power is developed as a by-product, it should be disposed of in advance by contracts which will fairly reimburse the Government for its outlay.

The Reclamation Service should be extended to cover these broad purposes of storage and conservation of water rather than the narrow purpose of irrigation. Such important projects as the dam at Boulder Canyon, the dam at Cove Creek, and the development of the Columbia, should ultimately be undertaken when there is need for such service and when contracts can be made for the sale of power to amortize the cost of construction to the Government. The actual construction work under this plan should be carried out by the Public Works Administrator and the completed projects administered by the Reclamation Service.

#### CONSERVATION OF WESTERN RANGES

There should be a change in policy in dealing with public lands if we are to preserve their value for grazing and other purposes. The Committee on Conservation and Administration of the Public Domain, authorized by act of the Congress approved April 10, 1930, completed the task assigned to it a year ago. Its report has been transmitted to Members of the Congress. Legislation carrying into effect the recommendations of the committee also is before the Congress. These proposals are the result of painstaking study and earnest deliberation. They offer a solution of the problems, connected with this remnant of our public domain, which have persisted for the past 25 years. I commend the report to the attention of the Congress, deeming the legislation of sufficient importance to justify early action.

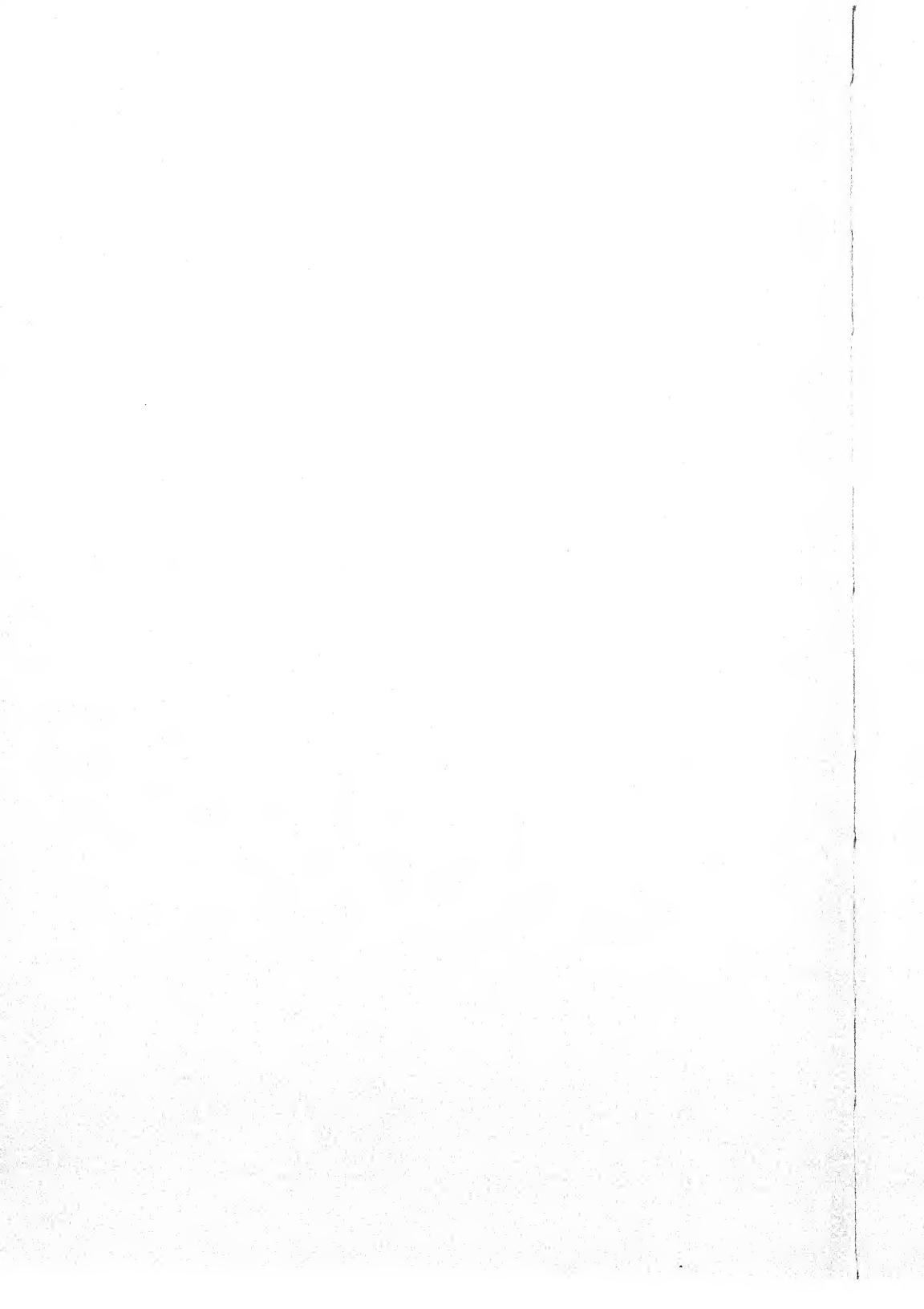
#### CONCLUSION

In conclusion, I can not recommend too strongly that the Congress give the subject of effective organization of the executive branch of the Government its early and serious attention. It is an essential part of a sound reconstruction and economy program. A patchwork organization compels inefficiency, waste, and extravagance. Economy and efficiency can come only through modernization. A proper reorganization of our departments, commissions, and bureaus will result, not only in much greater efficiency and public convenience, but in the saving of many millions of dollars now extracted annually from our overburdened taxpayers.

HERBERT HOOVER.

THE WHITE HOUSE,

*February 17, 1932.*



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